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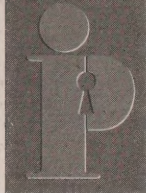
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HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## HIGHLIGHTS OF ORDERS

These highlights are prepared for the purposes of convenience only. For accurate reference, refer to the official orders of the Information and Privacy Commissioner, available from Publications Ontario at 1-800-668-9938. Please note: Orders are marked Order No. "P" to denote provincial orders and Order No. "M" to denote municipal orders.

### ORDER P-280 APPEAL P-910122

Institution: Ministry of Transportation  
MARCH 12, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • correspondence  
• danger to safety or health • confidentiality provision in other Act

The appellant requested access to medical and psychiatric assessments requested by the institution, and to the name of the person who submitted the letter which precipitated the institution's request for the assessments.

The institution provided the appellant with a copy of a "Driver's Medical Information Report" and denied access to the letter under section 20 of the *Act*.

The appellant appealed the institution's decision to deny access to the letter.

#### ORDER

The head was ordered to disclose the record to the appellant.

The information contained in the record qualified as the personal information of the appellant, and not the affected person. Because evidence which would raise a reasonable expectation that disclosure of the record would seriously threaten the safety or health of an individual had not been provided, the requirements for exemption under section 20 were not met.

The affected person raised the application of a confidentiality provision. The confidentiality provision referred to is not listed in section 67(3), nor does it specifically provide that it prevails over the *Act*. Consequently, the *Act* prevailed.

**SECTIONS CONSIDERED**  
2(1), 20, 49(a), 67(2), 67(3)  
**PREVIOUS ORDERS CONSIDERED**  
188

### ORDER P-281 APPEAL P-910745

Institution: Ministry of Community and Social Services  
MARCH 17, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

solicitor client privilege • crown counsel • for use in giving legal advice

The appellant requested access to a two page memorandum prepared by a lawyer from the institution's Legal Services Branch concerning the institution's access to client files at a Family Services Centre.

The institution denied access to the record under section 19 of the *Act*.

The appellant appealed the institution's decision, claiming that a solicitor-client relationship did not exist, and that the issue considered in the record was a matter of compelling public interest.

#### ORDER

The head's decision was upheld.

The record was prepared by an employee who qualifies as "Crown counsel", and was prepared to offer ongoing legal advice in the context of a matter under dispute. Because the record was a legal opinion which provided the interpretation of an agreement and advised the program manager regarding legal options to consider in attempting to resolve the matter, it qualified for exemption under section 19.

Though the appellant made representations which dealt with the subject matter of section 23 of the *Act*, section 23 was not considered as it does not apply to section 19 of the *Act*.

**SECTIONS CONSIDERED**  
19  
**PREVIOUS ORDERS CONSIDERED**  
210





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## ORDER P-282 APPEAL P-910201

Institution: Ministry of Consumer and  
Commercial Relations

MARCH 18, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • resume • presumption of • unjustified invasion of • personal privacy • public interest override

The appellant requested access to information concerning the academic background and professional experience of an employee of the institution.

The institution denied access to the record under section 21 of the *Act*.

The appellant appealed the institution's decision. During mediation, the parties agreed that the only record which remains at issue is a copy of the employee's resumé.

### ORDER

The head's decision was upheld.

The record contained information which qualified as personal information of the affected person. The personal information satisfied the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(d). No combination of the factors mentioned in section 21(2) existed to outweigh the presumed unjustified invasion of personal privacy. As such, the record qualified for exemption under section 21 of the *Act*.

Section 23 did not apply, as there was no public interest in the disclosure of the records.

### SECTIONS CONSIDERED

2, 21, 23

### PREVIOUS ORDERS CONSIDERED

210

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## ORDER P-283 APPEAL 900636

Institution: Ministry of Health

MARCH 24, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • unjustified invasion of • personal privacy

The appellant requested access to records, including statements made by three named individuals, which precipitated a letter of reprimand being placed on the appellant's personnel file.

The institution granted partial access to the record, citing exemptions under sections 21 and 49(b) of the *Act*.

### ORDER

The head's decision was upheld.

The record contained information which qualified as personal information of the affected persons and the appellant. Sections 21(2)(f) and (h) were relied upon by the institution and the affected persons, and were found to be relevant considerations. Section 21(2)(d) was referred to in substance by the appellant, but was found not relevant in the context of this appeal. As such, the record qualified for exemption under section 49(b) of the *Act*.

### SECTIONS CONSIDERED

2, 21, 49(b)

### PREVIOUS ORDERS CONSIDERED

37

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## ORDER P-284 APPEAL 900095

Institution: Ministry of Health

MARCH 25, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

pharmaceutical information • access procedure • content of decision letter • solicitor client privilege • third party information • technical • commercial • scientific • reasonable expectation of • harm • competitive position • financial loss • undue loss or gain • similar information • no longer supplied • personal information • unjustified invasion of • personal privacy

The appellant requested access to records relating to a company's applications for listing of a drug in the Ontario Formulary.

The institution provided partial access to the records, citing exemptions under sections 17, 19 and 21 of the *Act*.

The appellant appealed the institution's decision to withhold parts of the records, and claimed that the contents of the institution's decision letters did not satisfy the first two requirements of section 29(b) of the *Act*.

### ORDER

The institution's decisions to exempt parts of records under sections 17, 19 and 21 were partially upheld.

The institution acknowledged that its first two decision letters did not provide reasons, as required by section 29(1)(b)(ii). It has undertaken to ensure that this section is fully complied with in the future.

One record was found to be a confidential communication between a client and a legal advisor directly related to seeking, formulating or giving legal advice such that the requirements for exemption under the first branch section 19 were satisfied. A record which did not relate to seeking formulating or giving legal advice; was not created or obtained for the lawyer's brief for existing or contemplated litigation; and was not pre-





pared for use in giving legal advice, in contemplation of litigation or for use in litigation did not satisfy the requirements of either branch of the section 19 exemption.

Parts of a written submission relating to drug interchangeability data provided to the institution by an affected party were found to contain scientific, technical and commercial information supplied to the institution in confidence, the disclosure of which would significantly prejudice the competitive position of the affected party. Because master formulae for drugs listed in the Ontario Formulary must be filed with the institution and the drug to which one of the severances relates is now so listed, the prospect of disclosure of the master formula availability information (not the master formula itself) did not give rise to a reasonable expectation of the types of harm listed in section 17(1)(a),(b) or (c).

The name of a person, which did not appear with other personal information about the individual, was found not to qualify as "personal information" as defined in section 2(1), and therefore could not qualify for exemption under section 21 of the *Act*. The names of other persons who had reviewed drug products for the institution were found to qualify as personal information.

Direct reference was made to Order P-235, which found that the concerns of the institution and the reviewers about the importance of maintaining confidentiality to preserve the integrity of the drug review process and avoid the harassment and lobbying on the part of drug manufacturers were found to outweigh the appellant's arguments that the identity of these individuals was necessary in order to assess the quality of their reports. The appellant was given the opportunity to distinguish the present appeal from that in Order P-235, but did not respond. The disclosure of the reviewer's personal information would be an unjusti-

fied invasion of their personal privacy under section 21 of the *Act*.

#### SECTIONS CONSIDERED

2, 17, 19, 21, 29

#### PREVIOUS ORDERS CONSIDERED

36, 49, 61, 210, P-235

### ORDER P-285 APPEAL 900649

Institution: Ministry of the Solicitor General

MARCH 27, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • presumption of  
• unjustified invasion of • personal privacy  
• advice to government • law enforcement  
• investigation • report

The appellant requested access to a complaint file held in the Professional Standards Branch of the Ontario Provincial Police.

The institution provided partial access to the records, citing exemptions under sections 13, 14(1)(a), 14(2)(a), 19 and 21 of the *Act*.

#### ORDER

The institution's decision to withhold the record was upheld.

The information contained in the record qualified as the personal information of the appellant, and portions of the record contained information that also qualified as the personal information of the affected persons. The portions of the record which contained the personal information of both the appellant and the affected persons satisfied the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(d). The appellant relied on section 21(2)(d), but it was found not relevant in the context of this appeal. As such, the information qualified for exemption

under section 49(b) of the *Act*.

Disclosure of part of the record would reveal advice and/or recommendations of a public servant, and qualified for exemption under section 13 of the *Act*.

Distinct from other employment-related disciplinary matters, the record at issue was created in the course of an investigation of conduct that was "unlawful" in the sense that it constituted an offence against discipline under a regulation. On conviction of an offence against discipline, an appeal could be made to the Ontario Police Commission. The Ontario Police Commission was found to constitute a "court or tribunal" and, on appeal, had the power to impose a sanction or penalty independently of the Police Commissioner (employer). As such, the circumstances surrounding the creation of the record were found to qualify as "law enforcement" as defined in section 2 of the *Act*. Because the matter had been appealed and the appeal body could hear further evidence and had the option to order a new hearing, the matter was not completed. As the ability to conduct these proceedings without interference is vital to the institution's effectiveness in carrying out its responsibilities and mandate, the information qualified for exemption under section 14(1)(a) of the *Act*.

Part of the records was an account of the results of an investigation of allegations against the appellant, related to the enforcement of the *Police Act*, and was created by a member of the Ontario Provincial Police. As such, it qualified for exemption under section 14(2)(a) of the *Act*.

#### SECTIONS CONSIDERED

2, 49(b), 13, 14(1)(a), 14(2)(a), 49(a)

#### PREVIOUS ORDERS CONSIDERED

37, 118, 157, 170, 182, 192, 200





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## ORDER P-286 APPEAL 900391

Institution: Ministry of Industry, Trade and Technology

APRIL 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

third party information • commercial  
• financial • labour relations • "supplied"  
• "in confidence" • reasonable expectation  
of • harm • competitive position

The appellant requested access to information pertaining to discussions between the institution and a company involved in the truck and trailer industry. The requester sought access to studies, letters and other materials about one of the company's plants which had closed.

The institution provided partial access to the records, citing exemptions under sections 12, 13, and 17 of the *Act*.

During mediation of the appeal, the scope of the appeal was narrowed to those records where section 17 was the only exemption relied upon.

### ORDER

The institution's decision was partially upheld.

The information contained in the record qualified as commercial, financial and/or labour relations information, and was supplied by the affected party in explicitly or implicitly in confidence.

The disclosure of certain specific financial information relating to the company's capitalization, including budget statements and re-financing arrangements, could prejudice the affected party's current competitive position and was found to be exempt under section 17.

Sufficient evidence to establish that the disclosure of the more general information would give rise to one of the types

of harms specified in sections 17(1)(a), (b) and (c) had not been provided, and therefore section 17(1) did not apply.

In his representations, the appellant raised the application of section 23. Because there was not a compelling public interest in the information found exempt under section 17, section 23 did not apply.

### SECTIONS CONSIDERED

17, 23

### PREVIOUS ORDERS CONSIDERED

36

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## ORDER P-287 APPEAL 900477

Institution: Ministry of Transportation

APRIL 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

clarity of request • reasonable steps to  
locate record • fees • deposit for fees  
• fee waiver

The appellant requested access to information pertaining to evolution of the drafting of a section of a regulation made under the *Highway Traffic Act*. The appellant indicated that its objective was to ascertain why a specific class of driver was exempted from the daily trip inspection requirement referred to in the regulation.

The institution issued a fee estimate. The appellant paid a deposit equal to one half of the fee, and requested a fee waiver. The institution waived the remaining half of the fee, and disclosed the record.

The appellant appealed the institution's response, claiming that the institution had incorrectly interpreted his request and as a result the fee should be refunded because the record was not responsive to his request. The appellant also claimed that an additional record existed which was responsive to his request which had not been disclosed.

### ORDER

The institution's decision was upheld.

Because there was no apparent ambiguity on the face of the appellant's request, it was capable of interpretation and response by the institution without clarification.

The Assistant Commissioner was satisfied that the institution made reasonable efforts to locate all records responsive to the request, and that the records disclosed were all responsive to the request.

In view of the reduction of the fee and the description of the search operations undertaken by the institution contained in its submissions, the fee charged by the institution was found to have been appropriate and in accordance with section 57 of the *Act*.

### SECTIONS CONSIDERED

24, 57

### PREVIOUS ORDERS CONSIDERED

13, 33, 38, 134

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## ORDER P-288 APPEAL 900283

Institution: Stadium Corporation of Ontario Limited

APRIL 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

advice to government • factual material • economic or other interests of Ontario

The appellant requested access to the Board of Directors meeting minutes for the period of October 15, 1989 through May 2, 1990.

The institution provided partial access to the records, subject to severances made pursuant to sections 17(1)(a), 18(1)(a), (c), (d), (e), (f) and (g), 19 and 22(a) and (b) of the *Act*.





#### ORDER

The institution was ordered to disclose the records to the appellant.

Because the institution's representations on section 17(1)(a) referred to harm to the institution's own economic or competitive interests, section 17(1)(a) was found not applicable.

All severances described decisions taken by the Board, not suggested courses of action. This information is properly characterized as factual information rather than advice, and does not qualify for exemption under section 13 of the *Act*.

The information was found not to have monetary or potential monetary value and therefore could not be exempt under section 18(1)(a) of the *Act*.

The severances did not contain information the disclosure of which could reasonably be expected to prejudice the economic interests or the competitive position of the institution, and therefore did not qualify for exemption under section 18(1)(c).

Detailed and convincing evidence of the harm contemplated by section 18(1)(d) and (e) was not provided by the institution, and the severed information did not, therefore, qualify for exemption under section 18(1)(d) or (e).

The evidence provided by the institution in support of its claim that section 18(1)(g) applied to exempt the severed information was found to be speculative at best, and not sufficient to satisfy the requirements of section 18(1)(g) of the *Act*.

#### SECTIONS CONSIDERED

13, 17, 18

#### PREVIOUS ORDERS CONSIDERED

87, 118, 188, 141, P-219, P-229

### ORDER P-289 APPEAL P-910422

Institution: Ministry of Correctional Services

APRIL 14, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • unjustified invasion of • personal privacy • severance

The appellant requested access to information regarding the accidental release of a named inmate from the Windsor Jail.

The institution denied access to the records pursuant to section 21 of the *Act*.

#### ORDER

The institution was ordered to disclose the records to the appellant, subject to the severance of the name and institution number of the named individual.

The records contained the personal information of the named former inmate. The records recounted an administrative error made by the institution, not a possible violation of law by the former inmate, therefore the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) of the *Act* were not satisfied. The promotion of public health and safety [section 21(2)(b)] and the potential for unfair damage to the former inmate's reputation [section 21(2)(i)] were found to be relevant considerations. Severance of the name and institution number from the records was found to be sufficient to protect the former inmate's reputation while promoting public health and safety.

#### SECTIONS CONSIDERED

2(1), 21(1)(f), 21(2)(f), 21(2)(i), 21(3)(b)

### ORDER P-290 APPEAL P-910748

Institution: Ministry of Natural Resources

APRIL 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • reasonable expectation of • harm • undue loss or gain • similar information • no longer supplied • economic or other interests of Ontario

The appellant requested access to a copy of a plan of survey which was commissioned and paid for by a private citizen respecting a proposed road to be built over Crown land to individual properties. The record was not registered, so it was not publicly available under the *Surveys Act*.

The institution denied access to the records pursuant to sections 17(1)(a) and (b) of the *Act*. During the course of mediation, the institution also raised the application of section 18(1)(a) of the *Act*.

#### ORDER

The head was ordered to disclose the record to the appellant.

The burden of proving a reasonable expectation of harm to the affected person if the records were disclosed was not discharged. This type of record is normally registered under the *Surveys Act* and, therefore, publicly available. Similar information would continue to be supplied, and undue gain to any person would not result given that the record is one that is normally publicly available. Accordingly, section 17(1)(a) and (b) did not apply.

While there are fees chargeable for the preparation of a plan of survey, the information itself did not have monetary value for the institution, nor was there an indication of an intention to provide the record in any way that would result in





some form of monetary gain by the institution. Accordingly, section 18(1)(a) did not apply.

#### SECTIONS CONSIDERED

17(1)(b), 17(1)(c), 18(1)(a)

#### PREVIOUS ORDERS CONSIDERED

36, 47, 48, 68, 80, 87, 101, 166, 204, P-219, P-228, P-249, P-270

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### ORDER P-291

#### APPEAL P-910120

Institution: Ministry of Health

APRIL 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • unjustified invasion of • personal privacy • solicitor client privilege • pharmaceutical information

The appellant requested access to a copy of every record relating to review and consideration of the submission by a drug company for the listing of a drug in the Ontario Formulary, with the exception of records originating from the drug company.

The institution granted access to 18 records, provided partial access to four records with severances pursuant to section 21 of the *Act*, and denied access to four other records pursuant to section 19 of the *Act*. During the course of mediation, the institution also raised the application of section 18(1)(a) of the *Act*.

#### ORDER

The head's decision was upheld.

The information severed from the records pursuant to section 21 of the *Act* was similar in nature to the information at issue in Orders P-235 and P-284, which dealt with similar requests to the same institution by the same appellant. The appellant did not establish a change in circumstances since the issuance of those

orders which would distinguish this appeal from the previous ones. Therefore, section 21 was applicable.

The records which were withheld under section 19 of the *Act* were confidential written communications between a lawyer and a client, which were directly related to seeking, formulating or giving legal advice and were properly exempt under section 19 of the *Act*.

#### SECTIONS CONSIDERED

19, 21

#### PREVIOUS ORDERS CONSIDERED

49, P-235, P-284

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### ORDER P-292

#### APPEAL P-910471

Institution: Archives of Ontario

APRIL 22, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • personal privacy • deemed not to be presumption against disclosure

The appellant requested access to the contents of the Health Disciplines Board's file regarding the appellant.

The institution granted access to 90 records, and provided partial access to 11 records with severances pursuant to section 49(b) of the *Act*. During the course of mediation, the scope of the appeal was narrowed to only one paragraph of a letter written by a doctor to the College of Physicians and Surgeons in the context of the Health Disciplines Board's review involving the appellant. The institution withdrew its claim for exemption under section 49(b) and indicated that it was relying instead on section 21 of the *Act*.

#### ORDER

The institution was ordered to disclose the severed paragraph of the record to the

appellant.

The severed paragraph contained information of the doctor, and not the appellant. The *Act* does not provide an absolute exemption for the release of personal information to someone other than the individual to whom the information relates. Rather, it permits disclosure if doing so would not constitute an unjustified invasion of the individual's personal privacy. The information could not be accurately characterized as highly sensitive. Although the letter itself may have been submitted with an expectation of confidentiality, it was disclosed to the appellant. This was done because the contents of the severed paragraph were not, in and of themselves, the type of information which would have been provided in confidence. Therefore, disclosure of the severed paragraph would not constitute an unjustified invasion of the personal privacy of the doctor.

#### SECTIONS CONSIDERED

2(1), 21

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### ORDER P-293

#### APPEAL 900036

Institution: Ministry of Health

APRIL 24, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

appeal • time limit • jurisdiction of Commissioner • Cabinet records • minutes • relations with other governments • third party information • harm • competitive position • reasonable expectation of • undue loss or gain • commercial • economic or other interests of Ontario • public interest override • health and safety information

The appellant requested access to 1988 and 1989 representations and/or reports on the potential sale of Connaught in





full, conditions on such a sale, and effect on vaccine supplies.

The institution denied access to the records pursuant to sections 12, 13, 15(a) and (b), and 18(d), (e) and (g) of the *Act*.

#### ORDER

The head's decision was partially upheld.

The appeal of the head's decision was filed 32 days, as opposed to 30 days, after the decision was made by the institution. No evidence of prejudice was submitted by the institution or the affected parties, and the Assistant Commissioner found that he had jurisdiction to review the head's decision.

Certain records and information severed from records was found to be outside of the scope of the appellant's request, and the institution and the affected parties abandoned their exemption claims to three of the records.

None of the records which the institution claimed were exempt under section 12(1) were actually submitted to Cabinet. However, five of the seven records for which section 12(1) was claimed would reveal the substance of deliberations of Cabinet, and were therefore properly exempt.

The one record for which section 12(1)(a) was claimed consisted of minutes of a Cabinet meeting, and was therefore exempt.

There was no evidence to indicate that release of the information would prejudice relations between the institution and another government or governments, and the requirements of section 15(a) were not satisfied. There was no evidence to indicate that the information contained in the records was received in confidence from another government, and the requirements of section 15(b) were not satisfied.

Because negotiations concerning the takeover had been completed, section 18(1)(e) did not apply. The institution

did not provide sufficient evidence to substantiate its claim that harm could reasonably be expected to result if the information were disclosed, and the requirements of section 18(1)(d) and (g) were not satisfied. The type of potential harm referred to by the institution was in regard to the position of the affected parties, and was properly addressed under section 17.

The information contained in the records for which the affected party had raised the application of section 17 qualified as "commercial information" for the purposes of section 17(1). The information was supplied in confidence implicitly. Detailed and convincing evidence of potential harm to the affected party's competitive position and undue loss or gain that would result from disclosure of portions of some of the records was provided, and only those portions qualified for exemption under section 17.

The Information and Privacy Commissioner or his delegate does not have the power to make an order pursuant to section 11 of the *Act*.

There was no compelling public interest in the disclosure of the portions of the records found exempt under section 17 which clearly outweighed the purpose of the section 17 exemption.

#### SECTIONS CONSIDERED

11(1), 12, 15(a) and (b), 17, 18(1)(d), (e) and (g), 23, 50(2)

#### PREVIOUS ORDERS CONSIDERED

22, 36, 65, 141, 155, 163, 187, 188, 204, 210, P-218, P-219, P-226, P-229, P-248, P-278

### ORDER P-294 APPEAL 900615

Institution: Ministry of Health

MAY 1, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • deceased persons  
• medical, psychiatric or patient records  
• presumption of • unjustified invasion of  
• personal privacy

The appellant requested access to all documents relevant to the Health Disciplines Board investigations of two named physicians which were conducted in response to complaints made by the appellant about medical treatment given to his father, who is now deceased. The appellant did not provide documentation which would demonstrate that he had been officially appointed as his father's personal representative, or confirm that he was seeking the information in relation to the administration of his father's estate.

The institution granted partial access to the records, denying access to others, in whole or in part, pursuant to section 21 of the *Act*. The institution identified portions of the records which contained the appellant's personal information, and were taken to have intended to exempt these portions from disclosure pursuant to section 49(b) of the *Act*.

#### ORDER

The head's decision was partially upheld.

The appellant did not provide sufficient evidence to demonstrate that he was his father's personal representative for the purposes of the *Act*. Accordingly, the appellant's request for information, as it related to his father's personal information, was subject to the mandatory provisions of section 21 of the *Act*.

Portions of the record contained the personal information of the appellant and other individuals. The remaining records contained the personal information of individuals other than the appellant.

Allegations about physicians which were made by the appellant in one record



could not be considered highly sensitive [s.21(2)(f)]. The institution did not provide any evidence to support its claim that the information was supplied in confidence [s.21(2)(h)], or that its disclosure could unfairly damage the reputation of any person referred to in the record [s. 21(2)(i)]. Disclosure of this record, therefore, would not constitute an unjustified invasion of personal privacy under section 49(b).

A letter in which concern was expressed that information submitted be kept confidential, with no indication that the letter itself be kept confidential does not satisfy the requirements of section 21(2)(h), and disclosure would not constitute an unjustified invasion of privacy under section 49(b).

Records which related to the medical history, diagnosis, condition and treatment of the appellant's father satisfied the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(a). Evidence to establish the relevance of factors listed under section 21(2) was not provided, and disclosure of these records was found to constitute an unjustified invasion of personal privacy under section 21.

Disclosure of the birth dates of the physicians was found to constitute an unjustified invasion of personal privacy under section 21.

Sufficient evidence to establish that disclosure of the remainder of the records would constitute an unjustified invasion of personal privacy under section 21 was not provided for the remaining records.

#### SECTIONS CONSIDERED

2, 21, 47, 49(b), 66(a)

#### PREVIOUS ORDERS CONSIDERED

20, 37

## ORDER P-295 APPEAL 900280

Institution: Ministry of Housing

MAY 1, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

access procedure • notice to parties by head • jurisdiction of Commissioner  
• personal information • third party information • commercial information  
• financial information • "in confidence"  
• reasonable expectation of • harm  
• similar information • no longer supplied

An individual requested access to a copy of all correspondence passing between the appellant, a named individual and the Ministry of Housing during the period of February 1989 to present.

The institution provided access to some records and, after receiving representations regarding the disclosure of other records, informed the appellant that it intended to disclose the other records to the requester as well.

The appellant appealed the institution's decision to disclose the records about which he had been notified. The appellant also appealed the institution's failure to notify him prior to disclosing other records.

#### ORDER

The head's decision was upheld.

The appellant's right to appeal a head's decision, under section 50(1) of the *Act*, extends to those affected persons who have been given notice of a request under section 28(1) of the *Act*. Because the appellant was not given notice with respect to the request for the records that were disclosed to the requester, the Assistant Commissioner found that he did not have jurisdiction to review the institution's decision not to notify the appellant under section 28.

The records contained recorded information about a commercial dwelling and the *Building Code Act*, not recorded information about any identifiable individual. The views and opinions expressed in the records are recorded on business letterhead and were sent to the institution in support of a hearing before the Building Code Commission. They did not contain views or opinions of another individual about another individual, and were not of a private, confidential, or personal nature. Therefore, the records did not qualify as personal information as defined in section 2(1) of the *Act*.

All except one of the records contained technical and/or financial information. Because of the context in which the records were submitted and the detailed submissions made by the appellant with respect to his expectations of confidentiality, the Assistant Commissioner was prepared to assume that the records were supplied to the institution in confidence implicitly.

One of the types of harm identified by the appellant related to harm to the position of the institution, which is not one of the types of harm contemplated by section 17. Potential harm to the institution's interest is addressed by section 18 of the *Act*, which was not claimed by the institution. Disclosure of the record could not reasonably be expected to prevent similar information from being supplied to the institution. A party who feels that it is in his/her interest to apply for a hearing before the Building Code Commission will do so, whether or not this information is disclosed.

#### SECTIONS CONSIDERED

2(1), 17, 28(1), 50(1)

#### PREVIOUS ORDERS CONSIDERED

36





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## ORDER P-296 APPEAL 900184

Institution: Ministry of the Solicitor General  
MAY 13, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORD

personal information

The appellant requested access to a copy of an Ontario Provincial Police (OPP) report relating to an incident at an OPP detachment.

The institution denied access to the record under section 14(2)(a) of the *Act*. During the course of the inquiry, the institution withdrew its exemption claim under section 14(2)(d), and granted partial access to the record, with severances pursuant to section 21. The appellant indicated that he was not interested in the personal information of individuals other than his client, but felt that much more had been deleted from the document than was reasonably necessary to protect the identity of other persons.

### ORDER

The head's decision was partially upheld.

Information relating to the age, sex and family status, criminal history of identifiable individuals, the address of identifiable individuals, and the names of identifiable individuals where they appear with other personal information of the individuals qualified as personal information. The remaining information did not consist of personal information of individuals other than the appellant's client, and did not qualify for exemption under section 21.

### SECTIONS CONSIDERED

2(1)

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## ORDER P-297 APPEAL 900602

Institution: Ministry of Correctional Services  
MAY 20, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • correspondence  
• unjustified invasion of • personal privacy

The appellant requested access to letters of complaint received by the institution about the appellant in his capacity as an employee of the institution.

The institution denied access to the records under section 21 of the *Act*. During the course of mediation, the institution clarified that it was relying on section 49(b) rather than section 21 as the basis for denying access.

### ORDER

The head's decision was upheld.

The records are letters written by inmates which outline incidents involving themselves, two other individuals and the appellant. The records contained the personal information of the appellant, the authors of the letters, and the two other individuals.

The records did not contain any of the types of information listed in section 21(3), therefore did not satisfy the requirements for a presumed unjustified invasion of personal privacy. The information contained in the records could be characterized as highly sensitive [section 21(2)(f)]. The manner in which the records were submitted to and received by the institution could lead to a reasonable expectation that they would be treated confidentially [section 21(2)(h)]. As these two factors weighed in favour of a finding that disclosure of the records would constitute an unjustified invasion

of personal privacy, all three records qualified for exemption under section 49(b).

### SECTIONS CONSIDERED

2(1), 10, 21, 49(b)

### PREVIOUS ORDERS CONSIDERED

37

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## ORDER P-298 APPEAL 900626 AND 900628

Institution: Ministry of the Attorney General  
MAY 20, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • advice to government • content of decision letter

The appellant requested access to personal information in the custody and control of the Executive Co-ordinator, Legal Services Branch, Civil Law Division, and the Assistant Deputy Attorney General, Civil Law Division for the period of January 1, 1988 to November 30, 1990.

The institution granted access to all but one page in response to both requests. The withheld page is identical in each appeal, and was exempted in both cases pursuant to sections 13 and 49(a) of the *Act*.

The appellant appealed the institution's decision, claiming that the remaining page should have been disclosed in full, and that the notice of refusal letters sent by the institution did not comply with section 29(1)(b)(ii) of the *Act*.

### ORDER

The head's decision was partially upheld.

The record contained the appellant's name, address, information relating to his medical condition, and the views or opinions of another individual about the appellant, which qualified as the appellant's personal information.



One paragraph of the record contained advice, and qualified for exemption under section 13. The remainder of the record consisted of a factual summary of events involving the appellant, which did not qualify for exemption under section 13. Because the portion of the record which qualified for exemption under section 13 consisted of the appellant's personal information, the section 49(a) exemption was available, and was upheld.

The institution's notice of refusal letters simply stated the wording of section 13(1) without further description of the withheld record or reasons for applying the exemption. This was not sufficient to satisfy the requirements of section 29(1)(b)(ii).

#### SECTIONS CONSIDERED

2(1), 13, 29(1)(b)(ii), 49(a)

#### PREVIOUS ORDERS CONSIDERED

94, 118, 158

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### ORDER P-299 APPEAL 900616

Institution: Ministry of Community and Social Services

MAY 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • unjustified invasion of • personal privacy

An individual requested access to correspondence from three named parties which contained allegations of impropriety on the requester's part.

The institution granted access to the records, and notified the three parties accordingly. One of the notified parties appealed the institution's decision to release one of the records.

#### ORDER

The head was ordered not to disclose the record.

The record was a portion of a paragraph of a letter submitted in confidence by the appellant to the institution, and qualified as the appellant's personal information. Because the record was submitted in confidence [section 21(2)(h)], disclosure would constitute an unjustified invasion of the appellant's personal privacy under section 21.

#### SECTIONS CONSIDERED

2(1), 21(2), 21(3)

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### ORDER P-300 APPEAL 900630

Institution: Ministry of Community and Social Services

MAY 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • correspondence

An individual requested access to correspondence from three named parties which contained allegations of impropriety on the requester's part.

The institution granted access to the records, and notified the three parties accordingly. One of the notified parties appealed the institution's decision to release one of the records.

#### ORDER

The head was ordered to disclose the record.

The record was a portion of a paragraph of a letter submitted to the institution by an organization. Correspondence submitted to an institution by a representative of a group or association such as the body represented by the appellant in this appeal is not the personal information of the author of the correspondence.

#### SECTIONS CONSIDERED

2(1)

#### PREVIOUS ORDERS CONSIDERED

16, 42, 80, 113

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### ORDER P-301 APPEAL 900418

Institution: Ministry of the Solicitor General

MAY 22, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • presumption of • unjustified invasion of • personal privacy • solicitor client privilege • for use in giving legal advice • *Charter of Rights and Freedoms*

The appellant requested access to the results of an investigation by the Ontario Provincial Police (the OPP) into allegations of assault made by him against an OPP constable with regard to an incident at a conservation area.

The institution granted access to some records. Access to the remaining records was denied, either in whole or in part, under sections 14(1)(a), 14(2)(a), 19 and 21(1)(f) of the *Act*.

The appellant appealed the institution's decision to deny access to the records, and suggested that the OPP's investigation of its own officers, as well as some aspects of the Information and Privacy Commissioner's process may violate the *Charter of Rights and Freedoms*.

#### ORDER

The head's decision was upheld.

Sufficient argument to establish a Charter challenge was not provided by the appellant.

One of the records contained the personal information of the appellant only, and the remainder of the records and



severances contained the personal information of the appellant and other individuals. The requirements for a presumed unjustified invasion of privacy were met for the records which contained the personal information of the appellant and other individuals, as these records were compiled as part of an investigation into a possible violation of law [s.21(3)(b)]. Disclosure of the records would constitute an unjustified invasion of personal privacy under section 49(b).

The remaining record was a letter from a solicitor to the conservation authority where the incident involving the appellant took place. This record qualified for exemption under section 19 of the *Act*, and discretion to withhold the record was not exercised improperly under section 49(a) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 19, 49(a), 49(b)

#### PREVIOUS ORDERS CONSIDERED

20, 37, P-218

### ORDER P-302 APPEAL 900457

Institution: Ministry of Financial Institutions

MAY 27, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

law enforcement • confidential source

The appellant requested access to a complaint letter submitted to the institution concerning the appellant's business activities and the name of the author(s) of the letter.

The institution granted access to the letter, subject to the severance of the name and address of the author of the letter, and a portion of one sentence which could serve to identify the author, under section 14(1)(d) of the *Act*.

#### ORDER

The head's decision was upheld.

Investigations or inspections conducted by the institution under the *Insurance Act* could lead to proceedings in a court or tribunal where penalties or sanctions could be imposed, and therefore qualified as "law enforcement" under the *Act*.

There was an expectation of confidentiality on the part of both the institution and the author of the letter at the time the record was submitted and, because only the name, address and one other related reference had not already been released to the appellant, release of this information would clearly "disclose the identity of a confidential source" [s.14(1)(d)].

#### SECTIONS CONSIDERED

2(1), 14(1)(d)

#### PREVIOUS ORDERS CONSIDERED

139

### ORDER P-303 APPEAL 900605

Institution: Ministry of Community and Social Services

MAY 28, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

The appellant requested access to a number of records related to alleged incidents at a Day Care Centre.

The institution granted partial access to the request, with severances pursuant to section 21 of the *Act*, and advised that some of the requested records did not exist.

The appellant appealed the head's decision, claiming that additional records which were responsive to her request did

exist. During the course of mediation additional records were located and disclosed to the appellant.

#### ORDER

The institution made all reasonable efforts to locate the records responsive to the request.

The institution identified the steps taken to locate all the responsive records. Although the original search conducted by the institution was not reasonable in the circumstances, the institution's search was adequately expanded during the course of the appeal.

### ORDER P-304 APPEAL 900128 AND 900137

Institution: Ministry of Financial Institutions

MAY 29, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

Cabinet records • advice to government • factual material • law enforcement • investigation • report • confidential source • solicitor client privilege • in contemplation of or for use in litigation • for use in giving legal advice • personal information • presumption of • unjustified invasion of • personal privacy

The appellant requested access to records related to proceedings involving his former business and files of a number of institution employees and departments from the year 1975 in respect of matters pertaining to insurance.

The head granted partial access to the records, with severances pursuant to sections 12, 13, 14, 15, 17, 19, 21 and 22 of the *Act*. During the course of the inquiry, the institution withdrew its application of section 22.



#### ORDER

The head's decision was partially upheld.

The records for which the head had claimed section 12 did not qualify for exemption as the matter did not relate to the making of government decisions or the formulation of government policy. Rather, the matter related to a government policy that had already been formulated and implemented.

Factual background information did not include a suggested course of action, and was not "advice" for the purposes of the *Act*, and did not qualify for exemption under section 13. The specific recommendations of an employee was "advice", and qualified for exemption under section 13 of the *Act*.

A record dealing with regulatory issues of mutual interest to the provinces' Superintendents of Insurance, which was received by the institution in confidence, qualified for exemption under section 15(b) of the *Act*.

Records prepared by or for Crown counsel for use in giving legal advice or at a time when litigation was either contemplated or actually in progress qualified for exemption under section 19 of the *Act*.

Reports prepared during the course of investigations conducted by the Ministry of Consumer and Commercial Relations under the *Insurance Act* qualified for exemption under section 14(2)(a) of the *Act*. Records which were observations or recordings of fact or were not prepared as part of an actual investigation did not qualify for exemption under section 14(2)(a).

Investigations or inspections conducted by the institution under the *Insurance Act* qualified as "law enforcement" under the *Act*. Letters which were sent to the institution from and transcriptions of telephone conversations with

various sources who provided information during the prosecution of the appellant's automobile club would "disclose the identity of a confidential source" [s.14(1)(d)] and qualified for exemption.

Personal information of individuals other than the appellant were compiled and identifiable as part of an investigation into a possible violation of law, and met the requirements for a presumed unjustified invasion of privacy contained in section 21(3)(b). The personal information severed from the records was not sufficiently relevant to the appellant's rights to rebut the presumption contained in section 21(3)(b).

#### SECTIONS CONSIDERED

2(1), 12(1), 12(1)(d), 13, 14(1)(d), 14(2)(a), 15(b), 19

#### PREVIOUS ORDERS CONSIDERED

20, 118, 139, 188, 200, 206, 210

#### ORDER P-305 APPEAL 900437

Institution: Ministry of Consumer and Commercial Relations

JUNE 2, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

The appellant requested access to personal information contained in personnel records and information pertaining to a job competition in which he was an unsuccessful candidate. The institution provided partial access to the records, and their decision was partially upheld in Interim Order P-273. The only remaining issue in the appeal relates to whether or not a specific record existed which was responsive to the request submitted by the appellant. The institution claims the record does not exist.

#### ORDER

All reasonable efforts had been made to locate the record.

In response to direction given in Order P-273, a Compliance Investigator attended at the premises of the institution and conducted an independent search for the record. The investigation did not produce the record.

#### ORDER M-9 APPEAL M-910405

Institution: Durham Regional Police Services

APRIL 10, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

record does not exist • reasonable steps to locate record

The appellant requested access to information relating to calls for assistance made by the appellant in 1965.

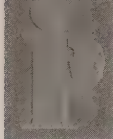
The institution informed the appellant that it was unable to grant access as no records existed which responded to her request.

#### ORDER

The search conducted by the institution was reasonable, and the head's decision was upheld.

The institution searched historical records, automated records, microfilm records, the former location of the relevant police department, and the personal records of a former police officer referred to by the appellant as a person who should know about the record in question. The requested record was not located. The search conducted by the institution was reasonable.





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## ORDER M-10 APPEAL M-910006

Institution: City of North York

APRIL 21, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

law enforcement • purposes of the *Act*  
• third party information  
• technical information • reasonable  
expectation of • harm • competitive  
position • solicitor client privilege  
• whether able to raise exemption not  
relied upon by institution

The appellant requested access to an engineering report which described the condition of an underground garage.

The institution denied access to the records pursuant to sections 8(1)(a) and 8(1)(b) of the *Act*. During the course of mediation of the appeal, sections 10(1)(a), (b) and (c) were also relied on to exempt the information. The affected party raised the application of section 12.

### ORDER

The institution was ordered to disclose the record to the appellant.

The institution's process of by-law enforcement involved investigations or inspections that could lead to proceedings in a court of law where penalties could be imposed, and therefore qualified as law enforcement under the *Act*. The institution claimed that disclosure of the record to the appellant could provide him with an opportunity to contradict the reports, question their validity and generally interfere with the law enforcement proceedings although he is not a party to them. The purposes of the *Act*, however, indicate that such scrutiny by the public must be accommodated. The institution did not provide sufficient evidence to establish that interference with a law enforcement matter could reasonably be

expected to result from disclosure of the record, and sections 8(1)(a) and (b) did not apply.

The information contained in the record could be considered to be technical information. The affected party's concerns about the effect of disclosure on its competitive position were speculative. In the absence of detailed and convincing evidence, the affected party's statement that disclosure could reasonably be expected to interfere significantly with contractual or other negotiations referred to by the owner was not accepted. Because the institution appeared to have the authority to inspect properties and have reports such as those at issue produced, the affected party's statement that it should reasonably be expected that similar information would no longer be supplied was not accepted. Accordingly, sections 10(1)(a), (b) and (c) did not apply.

The application of section 12 was raised by the affected party. Because the section was not relied on by the institution, and the actions of the institution were not clearly inconsistent with the application of a mandatory exemption provided by the *Act*, the application of section 12 was not considered.

### SECTIONS CONSIDERED

2(1), 8(1)(a), 8(1)(b), 10, 12

### PREVIOUS ORDERS CONSIDERED

M-2, M-4, 36, 49, 188, P-218, P-257, P-276

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## ORDER M-11 APPEAL M-910407

Institution: Wentworth County Board of Education

APRIL 22, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

solicitor client privilege • public interest  
override

The appellant requested access to a copy of a lawyer's reply with regard to the validity of noon hour bible clubs in the county.

The institution denied access to the records pursuant to section 12 of the *Act*. The appellant raised the application of section 16.

### ORDER

The head's decision was upheld.

A solicitor-client relationship was formed when the institution retained legal counsel for the purpose of obtaining legal advice. The advice was supplied to the institution in a confidential written communication, which was directly related to seeking, formulating or giving legal advice. The communication fit squarely within the common law solicitor-client privilege and the section 12 exemption applied to the record.

The public interest override provision contained in section 16 does not apply to section 12.

### SECTIONS CONSIDERED

12, 16

### PREVIOUS ORDERS CONSIDERED

49, M-2

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## ORDER M-12 APPEAL M-910143

Institution: Municipality of Metropolitan Toronto

APRIL 30, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

investigation report • law enforcement

The appellant requested access to a report by the Metropolitan Toronto Police Department of an investigation of the Metropolitan Licensing Commission.

The institution denied access to portions of the record pursuant to sections



8(2)(a), 8(2)(c) and 14(1)(f) of the *Act*.

#### ORDER

The head's decision was upheld.

The record was a report prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law, and therefore qualified for exemption under section 8(2)(a). The circumstances under which the institution decided not to disclose portions of the record were reviewed, and nothing improper was found in the way in which the head exercised his discretion.

#### SECTIONS CONSIDERED

8(2)(a)

#### PREVIOUS ORDERS CONSIDERED

200

### ORDER M-13

#### APPEAL M-910106

Institution: Ottawa-Carleton Regional  
Transit Commission

MAY 4, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

institution • jurisdiction • of commissioner  
• municipal corporation or other municipal institution

A request for access to personal information was received by the Regional Municipality of Ottawa-Carleton. The request was forwarded to the Ottawa-Carleton Regional Transit Commission (OC Transpo). OC Transpo operates as a regional transit commission in the Ottawa-Carleton Regional Area, but a small number of its regular bus routes cross the provincial border from Ottawa, into Hull, Quebec.

OC Transpo advised the requester that the *Act* did not apply to it, but that access was granted to some of the information under its Freedom of Informa-

tion and Protection of Privacy Policy.

The requester appealed the OC Transpo's decision to deny access to part of the information and its decision that the *Act* did not apply to OC Transpo.

#### ORDER

The head was ordered to make a decision regarding access to the records under the *Act*.

Because the bus routes which cross the Ontario border into Quebec are an integral part of the transit commission's regular operations, OC Transpo is a federal undertaking under sections 92.10 and 91.29 of the *Constitution Act, 1867*. Provincial laws of general application apply to federal undertakings where the laws do not sterilize or mutilate, or affect a vital part of the management and operation of the federal undertaking. The *Municipal Freedom of Information and Protection of Privacy Act* is a provincial law of general application which does not affect OC Transpo in its specifically federal aspect. The specifically federal aspect of OC Transpo is the operation of an interprovincial bus service. The *Act* affects OC Transpo in a secondary aspect of its operation. OC Transpo is a "transit commission" and accordingly falls within the definition of "institution" under section 2(1) of the *Act*. Therefore, the *Act* applies to it. Records, the disclosure of which would clearly affect labour relations, working conditions or a vital part of the management and operation of OC Transpo as a federal undertaking do not fall within the jurisdiction of the *Act*. The requested records do not fall within the area of working conditions or labour relations, nor would their disclosure affect a vital part of the management and operation of the institution, accordingly they fall within the jurisdiction of the *Act*.

#### SECTIONS CONSIDERED

2

### ORDER M-14

#### APPEAL M-910063

Institution: City of Cambridge

MAY 7, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • address • right to fair trial

The appellant requested access to copies of work orders issued by the municipality against residential rental properties since January 1, 1990.

The institution granted partial access to the work orders that had been complied with, severing personal information under section 14 of the *Act*. The institution denied access to the work orders that have not been complied with, pursuant to section 8(1)(f) of the *Act*.

During the course of mediation, the appellant indicated that he was not requesting the names and addresses of the owners of the properties.

#### ORDER

The institution was ordered to disclose the records to the appellant, with the names and addresses of the owners severed.

The municipal address of the properties did not constitute personal information under the *Act*, as it is information about a property, not about an identifiable individual. Accordingly, section 14 did not apply to the property addresses.

In those cases where compliance with the work order had occurred, it could not be said that section 8(1)(f) was relevant, as no trial or adjudication will occur. Where compliance with the work order had not occurred, the representations made by the institution in support of the application of section 8(1)(f) to the records which have not resulted in court proceedings were found to be at best specu-





lative, and section 8(1)(f) was not applicable. With regard to the one record where charges had been laid against a property owner, the institution's representations did not persuade the Commissioner to find that disclosure of the record could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication.

#### SECTIONS CONSIDERED

2(1), 8(1)(f)

#### PREVIOUS ORDERS CONSIDERED

23, 48, 188

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### ORDER M-15 APPEAL M-910060

Institution: City of Waterloo

MAY 7, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • address • law enforcement • report

The appellant requested access to copies of work orders issued by the municipality against residential rental properties since January 1, 1990.

The institution denied access to the records, pursuant to sections 8(1)(a), 8(2)(a), and 14 of the *Act*.

During the course of mediation, the appellant indicated that he was not requesting the names and addresses of the owners of the properties.

#### ORDER

The institution was ordered to disclose the records to the appellant, with the names and addresses of the owners severed.

The municipal address of the properties did not constitute personal information under the *Act*, as it is information about a property, not about an identifiable individual. Accordingly, section 14 did

not apply to the property addresses.

The institution's process of by-law enforcement involved investigations or inspections which could lead to proceedings in a court where penalties could be imposed and, therefore, qualified as "law enforcement" under the *Act*.

In considering the Orders to Comply issued by the institution the Commissioner was of the view that they do not consist of formal statements or accounts of results from a collation or consideration of information, but rather are notifications of repairs to be effected, and so do not qualify as reports. Therefore, section 8(2)(a) did not apply to the records.

All of the work orders had been complied with, therefore no question of interference can arise, and section 8(1)(a) did not apply to the records.

#### SECTIONS CONSIDERED

2(1), 8(1)(a), 8(2)(a)

#### PREVIOUS ORDERS CONSIDERED

23, 188, 200

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### ORDER M-16 APPEAL M-910004

Institution: The Corporation of the City of Oshawa

MAY 8, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

law enforcement • confidential source

The appellant requested access to the names of individuals who made four complaints to the institution about the use of two properties located in the City of Oshawa.

The institution denied access to the names of the complainants citing sections 8(1)(b), 8(1)(d) and 14 of the *Act*.

#### ORDER

The head's decision was upheld.

The same considerations that were addressed in Order M-4, which dealt with the same institution, applied in this appeal. The information is identical to one of the types of information, the name of the complainant, that was at issue in that order. In Order M-4: the institution's process of by-law enforcement qualified as "law enforcement" under the *Act*; a "reasonable expectation of confidentiality" was found within the institution's process of by-law enforcement; and disclosure of the record would disclose the identity of a confidential source of information. The appellant did not identify any circumstances or raise any argument which would distinguish this appeal from the appeal which resulted in Order M-4, therefore, the information was found to be exempt from disclosure under section 8(1)(d).

#### SECTIONS CONSIDERED

8(1)(d)

#### PREVIOUS ORDERS CONSIDERED

M-4

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### ORDER M-17 APPEAL M-910400

Institution: Metropolitan Licensing Commission

MAY 19, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

report • notes

The appellant requested access to a copy of the notes taken by the institution's Licensing Enforcement Officer in relation to a complaint of deficiencies in the installation of a linoleum kitchen floor.

The institution denied access to the record pursuant to section 8(2)(a) of the *Act*.



#### ORDER

The institution was ordered to disclose the record to the appellant.

The record was not a formal statement or account of the results of the Licensing Enforcement Officer's work but a series of entries outlining his observations with respect to the appellant's complaint. Because the record was not a "report", the record did not qualify for exemption under section 8(2)(a).

#### SECTIONS CONSIDERED

8(2)(a)

#### PREVIOUS ORDERS CONSIDERED

200

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### ORDER M-18 APPEAL M-920075

Institution: Lambton County Board of Education

MAY 22, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • employment  
• salaries • presumption of • unjustified  
invasion of • personal privacy • public  
scrutiny • public interest override

The appellant requested access to the actual salaries or salary ranges for the institution's Director, Executive Assistant and Superintendents.

The institution disclosed salary ranges which existed for two of the positions to the appellant, and denied access to the actual salaries of the employees in positions for which salary ranges did not exist, pursuant to section 14 of the *Act*.

#### ORDER

The institution was ordered to prepare a salary range for the positions for which salary ranges did not exist and to disclose the salary ranges to the appellant.

There was no dispute among the parties that the information requested qualified as "personal information", and the Commissioner agreed.

Disclosure of the salary for a specific position for which there is one incumbent would describe an individual's income as set out in section 14(3)(f) of the *Act* and would, therefore, constitute a presumed unjustified invasion of personal privacy. The presumed unjustified invasion of personal privacy was not rebutted by section 14(4)(a) or by a combi-

nation of the factors listed in section 14(2).

The Commissioner recognized that current economic environment places an even greater value on the prudent use of public funds, that operations of public institution should be open to public scrutiny, and that the public has a right to know how public funds are being spent. However, the Commissioner was not convinced that a compelling public interest in the disclosure of the exact salaries existed, such as to outweigh the purpose of the section 14 exemption.

Section 14(4)(a) itself incorporates the public interest as it permits members of the public to obtain information about the salaries of public employees. The public interest as reflected in section 14(4)(a) of the *Act* is such that, although the exact salaries should not be disclosed, salary ranges should be.

#### SECTIONS CONSIDERED

14(1)(f), 14(2)(a), 14(2)(c), 14(3)(f), 14(4)(a), 16

#### PREVIOUS ORDERS CONSIDERED

20, M-5





## HIGHLIGHTS OF COMPLIANCE INVESTIGATIONS

These highlights are prepared for the purpose of convenience only. Complete texts of compliance investigations are not currently available to the general public. Please note: investigation numbers are marked "P" to denote provincial investigations and "M" to denote municipal investigations.

### INVESTIGATION I91-19P

Institution: Liquor Control Board of Ontario  
APRIL 3, 1992  
(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collection • use • disclose

An individual complained that the institution:

- collected his personal information during an internal investigation, without providing the proper notice required under section 39(2) of the *Act*;
- used the personal information for disciplinary purposes, which was not the purpose for which the information had been obtained;
- disclosed his personal information to a number of employees at the institution.

#### CONCLUSION

The IPC concluded that the institution:

- had not given proper notice to the complainant, as required by section 39(2) of the *Act*;
- had used his personal information for the purpose for which it was obtained, in compliance with section 41 of the *Act*;
- had only disclosed his personal information in compliance with section 42 of the *Act*.

#### RECOMMENDATION

The IPC recommended that the institution provide proper notice when collecting personal information.

#### SECTIONS CONSIDERED

2(1), 39(2), 41, 42

### INVESTIGATION I91-23P

Institution: Cabinet Office  
MARCH 2, 1992  
(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • use

An individual complained that the institution had used his personal information without taking any reasonable steps to ensure that it was accurate or up to date. The complainant's personal information was contained in a memorandum sent to an official of the institution, from another employee of the same institution.

#### CONCLUSION

The IPC determined that the institution had taken reasonable steps to ensure that the complainant's personal information was accurate and up to date. The IPC found that most of the information contained in the memorandum came directly from the complainant's numerous letters to the institution. Therefore, it could be assumed that this information was accurate and up to date since it had been submitted directly by the complainant. The remaining information came from a senior government official's office before the memo had been written; there was no reason to question the accuracy of the information. Further, the IPC found that the institution had complied with section 41(b) of the *Act* since it had used the complainant's personal information for the purpose for which it was obtained i.e. to respond to his concerns.

#### SECTIONS CONSIDERED

2(1), 40(2), 41(b)

### INVESTIGATION I91-35P

Institution: Workers' Compensation Board  
APRIL 22, 1992  
(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • disclose

An individual complained that the institution had collected his entire medical record without limiting the collection to the medical information which pertained to the proceedings before the institution. The individual also complained that the institution had disclosed this medical record to another institution.

#### CONCLUSION

The IPC determined that the collection had occurred prior to the date that the *Act* came into force. Therefore, the Commissioner did not have the jurisdiction to make a determination with respect to this collection. However, the disclosure of the personal information occurred after the *Act* had been proclaimed, thus enabling the Commissioner to make a determination on this issue.

With respect to the disclosure of personal information to another institution, the IPC concluded that the disclosure was in compliance with section 42(e) of the *Act* since the institution was required under the *Workers' Compensation Act* to provide the medical record to the other institution.

#### SECTIONS CONSIDERED

2(1), 38, 42,

#### STATUTES CONSIDERED

*Workers' Compensation Act*



## INVESTIGATION I91-38P

Institution: Ministry of Correctional Services

APRIL 6, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information when it sent a carbon copy of a letter addressed to him, to an individual at another ministry.

The IPC determined that the complainant had written to both the individual at the institution and the individual at the ministry, requesting a response to previous correspondence he had sent to the institution. The individual at the institution therefore copied the letter to the individual at the ministry when she responded to the complainant. The complainant was aware that there was a relationship between the individual at the institution and the individual at the ministry.

Note: The report for this investigation was done in conjunction with investigation number I91-39P.

### CONCLUSION

The IPC concluded that it was not unreasonable for the complainant to have expected the institution to have copied the letter to the individual at the ministry. Therefore, the institution did not contravene the *Act*.

### SECTIONS CONSIDERED

2(1), 42,

## INVESTIGATION I91-39P

Institution: Ministry of Correctional Services

APRIL 6, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose • accuracy

An individual complained that the institution had disclosed his personal information when it sent a carbon copy of a letter addressed to him, to the Ombudsman. He also complained that certain dates within the letter were not accurate and up to date.

The institution could not locate any evidence which might explain why the letter was copied to the Ombudsman. The IPC reviewed the records at the institution, and determined that the dates in the letter were reasonably accurate.

Note: The report for this investigation was done in conjunction with investigation number I91-38P.

### CONCLUSION

The IPC concluded that the institution could not establish why the letter was copied to the Ombudsman. The IPC also concluded that the institution took reasonable steps to ensure that the information in the letter was accurate and up to date when it was used in the letter. Therefore, the institution complied with section 40(2) of the *Act*.

### RECOMMENDATION

The IPC reminded the institution about the limited purposes for which disclosure of personal information is permitted under section 42 of the *Act*.

### SECTIONS CONSIDERED

2(1), 40(2), 42,

## INVESTIGATION I91-40P

Institution: Ministry of Correctional Services

MARCH 3, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

The individual complained that the Ministry of Correctional Services had disclosed his personal information by sending him a letter in care of the superintendent of the centre where he resided.

The IPC determined that the institution had followed a mailing procedure applicable to inmates of facilities under its control. However, since the complainant was not an inmate of such a facility, the mailing procedure was followed in error.

### CONCLUSION

As a result of a recommendation made in a previous investigation, the institution amended its mailing guidelines to ensure that this practice did not extend to individuals residing at facilities outside of the control of the institution. The complainant was informed of the amendment to the guidelines and procedures.

### SECTIONS CONSIDERED

2(1), 42

## INVESTIGATION I91-48P \*

Institution: Ministry of Transportation

NOVEMBER 6, 1991

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • database • disclose

An individual complained that the institution disclosed her personal information from her vehicle registration to her ex-husband, without her consent.



#### CONCLUSION

The IPC informed the complainant that it has been working with the institution, for some time, to find solutions to the potential privacy invasion problems associated with the release of personal information from the institution's databases. The IPC also informed the complainant that it has made a number of recommendations to the institution that would increase the institution's control over the information disclosed through these databases, and that the institution is in the process of implementing them.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-53P

Institution: Ministry of Correctional Services

APRIL 15, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed her personal information contained in two letters, to her physician. The institution's Area Manager stated that he wrote these two letters to facilitate her return to work after her sick leave.

#### CONCLUSION

The IPC determined that the institution had disclosed five items of the complainant's personal information to her physician, contrary to the provisions of the *Act*.

#### RECOMMENDATIONS

The IPC recommended that the institution send a separate and distinct letter to the physician requesting a meeting to discuss the employee's return to work, which would not disclose more personal

information than was absolutely necessary to achieve these objectives.

#### SECTIONS CONSIDERED

2(1), 42

#### STATUTES CONSIDERED

*Public Service Act*

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### INVESTIGATION I91-57P

Institution: Ministry of Community and Social Services

MARCH 13, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his psycho-educational reports to prospective employers, without his full knowledge.

#### CONCLUSION

The IPC concluded that there had been no disclosure to prospective employers. We did, however, find evidence that the reports had been disclosed to private organizations providing client assessments to the institution. In each instance, a form consenting to its release had been signed by the complainant. Disclosure was therefore made in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(b) and (c)

#### STATUTES CONSIDERED

the *Mental Health Act*, the *Vocational Rehabilitation Services Act*.

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### INVESTIGATION I91-62P

Institution: Workers' Compensation Board

MARCH 4, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained about the disclosure of his personal information by the Workers' Compensation Board.

The IPC determined that:

- all five letters which the complainant had submitted in support of his complaint, contained his personal information relating to his WCB claim; one included the decision of the Decision Review Specialist;
- four of the letters had been sent either directly to or had been copied to, the centre where the complainant resided;
- the centre was the "employer of record" for the claim.

#### CONCLUSION

The IPC concluded that the personal information at issue had been disclosed by the WCB to the employer for a consistent purpose and one which could have reasonably been expected under the circumstances. Further, there had been a requirement under section 72(2) of the *Workers' Compensation Act* for the WCB to communicate promptly and in writing, the decision of the Decision Review Specialist to both the complainant and the employer.

#### SECTIONS CONSIDERED

2(1), 42(c), and 43

#### STATUTES CONSIDERED

The *Workers' Compensation Act*

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### INVESTIGATION I91-68P

Institution: Ministry of Transportation

MARCH 30, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had improperly disclosed his driving record, over the period of nine years, to his employer's insurance company.

The complainant worked as a driver.

The Ministry explained that the complainant's driving record had been disclosed as a result of an oversight, arising out of a "computer bug" which sometimes occurs in high volume systems (like the one which provides driver information to insurance companies). In response to the complaint, the Ministry provided a written letter of apology to the complainant.

Upon receiving the Ministry's apology, the individual withdrew his complaint.

#### WITHDRAWN

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-79P \*

Institution: Ministry of Transportation

DECEMBER 2, 1991

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • database • disclose

An individual complained that the institution disclosed his personal information, when it released his driving record to his automobile insurance company.

#### CONCLUSION

The IPC informed the complainant that it has been working with the institution, for some time, to find solutions to the potential privacy invasion problems associated with the release of personal information from the institution's databases. The IPC also informed the complainant that it has made a number of recommendations to the institution that would increase the institution's control over the information disclosed through these databases, and that the institution is in the process of implementing them.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-80P \*

Institution: Ministry of Transportation

NOVEMBER 27, 1991

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • database • disclose

An individual complained that the institution disclosed her name, address, telephone number and automobile information to another individual, without her consent.

#### CONCLUSION

The IPC informed the complainant that it has been working with the institution, for some time, to find solutions to the potential privacy invasion problems associated with the release of personal information from the institution's databases. The IPC also informed the complainant that it has made a number of recommendations to the institution that would increase the institution's control over the information disclosed through these databases, and that the institution is in the process of implementing them.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-81P

Institution: Ministry of Community and Social Services

MARCH 18, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that an officer of the institution's area office had improperly disclosed to her employer a

telephone call that she had made to the institution, in the capacity of an "interested citizen".

The IPC determined that the officer had asked the complainant to identify herself but had not recorded the name because she had forgotten it. The officer had later confirmed the complainant's name when she was asked by the employer if the complainant had made the call.

#### CONCLUSION

The IPC concluded that the information disclosed could not be considered "recorded information about an identifiable individual" and, therefore, was not "personal information" as defined by the *Act*.

Nevertheless, we were of the view that the officer had intended to record the complainant's name for the purpose of disclosing it to the employer. The information disclosed would have then been "personal information" and its disclosure would have been contrary to the *Act*.

#### RECOMMENDATIONS

The IPC recommended that the institution's area office review the manner in which its staff handled inquiries from the public, in light of the requirements of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-83P

Institution: A College of Applied Arts and Technology

APRIL 15, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his Social Insurance Number (SIN), without his consent, by





including his SIN on a mailing label addressed to him.

The IPC determined that the individual's SIN had been printed on the mailing label instead of a filing label, as a result of a printing error.

#### CONCLUSION

The IPC concluded that the complainant's personal information had been disclosed by the institution. However, the institution had taken adequate steps to ensure that such a disclosure would not happen again.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I92-03P

Institution: Ministry of Natural Resources

FEBRUARY 28, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • personinfo

An individual complained that the institution had disclosed his personal information, when it released the report of an investigation into a complaint of sexual harassment to the person who had filed the complaint. The complainant stated that he had been the principle witness in the investigation.

Although the complainant had initially requested the IPC to investigate the disclosure of the report, he subsequently withdrew his request. The complainant indicated that he was satisfied that the person who had released the copy of the report realized his error, and an investigation by the IPC was not, therefore, necessary.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I92-05P

Institution: Ministry of Transportation

MAY 6, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personal information • disclose

An individual complained that her medical information had been improperly disclosed through an investigative report given by her employer, the institution, to another employee.

#### CONCLUSION

The IPC found that the institution had disclosed the complainant's personal information, contrary to the provisions of the *Act*.

This was acknowledged by the institution.

During the course of the investigation, the complainant had indicated that her primary concern was that the investigative report containing her medical information could have an adverse effect on her career and job prospects within the institution.

We informed the institution of this concern. As a result, a letter from the institution was sent to the complainant apologizing for the improper disclosure of her personal information, and advising that steps were being taken to ensure that this would not happen again.

The complainant was given assurances that the investigative report would not form part of her personnel file and that no record of the report would be kept in her file.

#### SECTIONS CONSIDERED

2(1) and 42

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### INVESTIGATION I92-07P

Institutions: Social Assistance Review

Board (SARB), and

Ministry of Community and Social Services

APRIL 21, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • use • disclose

An individual complained that the two institutions had collected, used and disclosed his personal information contained in a SARB decision, contrary to the provisions of the *Act*.

The IPC wrote to the complainant on two occasions, requesting clarification of the complaint. The complainant did not reply to either of these letters. As a result, the IPC closed the complainant's file as abandoned.

#### ABANDONED

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### INVESTIGATION I92-10P \*

Institution: Ministry of Transportation

MARCH 6, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

database • disclose • personinfo

An individual complained that the institution disclosed his personal information, when it released his driving record to his employer.

#### CONCLUSION

The IPC informed the complainant that it has been working with the institution, for some time, to find solutions to the potential privacy invasion problems associated with the release of personal information from the institution's databases. The IPC also informed the complainant that it has made a number

of recommendations to the institution that would increase the institution's control over the information disclosed through these databases, and that the institution is in the process of implementing them.

#### SECTIONS CONSIDERED

2(1), 42

### INVESTIGATION I92-15P \*

Institutions: Ministry of Transportation and  
Ministry of the Attorney General

MARCH 9, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

available • database • disclose • personinfo

An individual complained that her ex-husband had obtained (a) both her own and her new husband's driving records from the Ministry of Transportation (MTO), and (b) information concerning a charge filed against her new husband, from a provincial court of the Ministry of the Attorney General.

#### CONCLUSION

The IPC informed the complainant that it has been working with MTO, for some time, to find solutions to the potential privacy invasion problems associated with the release of personal information from MTO's databases. The IPC also informed the complainant that it has made a number of recommendations to MTO that would increase MTO's control over the information disclosed through these databases, and that the institution is in the process of implementing these recommendations.

The IPC further informed the complainant that court documents are maintained for the purpose of creating records that are available to the general public, according to section 37 of the *Act*. Thus,

the disclosure of her new husband's personal information by the provincial court would not contravene Part III of the *Act*.

#### SECTIONS CONSIDERED

2(1), 37, 42

### INVESTIGATION I91-03M

Institution: A Municipal City

FEBRUARY 25, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • use

An individual complained that the City was collecting and using social insurance numbers for the purpose of taxicab driver licensing administration, contrary to the provisions of the *Act*.

#### CONCLUSION

The IPC determined that:

- The information in question was "personal information" as defined by section 2(1) of the *Act*.
- The personal information was "collected" by the institution.
- The collection of the SIN for the purpose of taxicab driver licensing administration contravenes section 28(2) of the *Act*.
- Proper notice of the collection of personal information was not given in accordance with the *Act*.
- The use of the SIN on taxicab driver licences and file labels was not in accordance with section 31 of the *Act*.

#### RECOMMENDATIONS

With respect to SIN, the IPC recommended that the institution:

- Discontinue the collection of SIN for the purpose of taxicab driver licensing administration.
- Discontinue all uses of the SIN.

- Within the next 12 months, remove the SIN from all file labels appearing on folders at the Taxi Licensing department.

With respect to non-SIN personal information, the IPC recommended that the institution:

- Revise the Application form to include proper notice pursuant to subsection 29(2) of the *Act*.
- Revise the Police/Criminal Record Data Request form to include the appropriate section of the municipal *Act*, pursuant to section 29(2)(a) of the *Act*.

With respect to the recommendation that the institution discontinue the collection of SIN for the purpose of taxicab driver licensing administration, the institution was reminded of the Commissioner's powers under section 46(b) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 28(2), 29(2), 31

#### STATUTES CONSIDERED

municipal *Act*

### INVESTIGATION I91-42M

Institution: A Municipal Township

APRIL 15, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose • request

An individual complained that the institution had improperly disclosed his personal information, when his access request was disclosed by the institution's Clerk-Treasurer to the institution's Chief Building Official. The individual also complained that the institution had improperly disclosed his personal information when its Council had discussed his alleged zoning infraction during an open Council meeting.





## CONCLUSIONS

The IPC concluded that the institution had complied with section 32(d) of the *Act*, when the complainant's access request was disclosed by the Clerk-Treasurer to the Chief Building Official, as the institution was required by the *Act* to respond to the request, and the Chief Building Official knew best which records were involved. The IPC also concluded that the institution had not complied with section 32 of the *Act* when it discussed the complainant's alleged zoning infraction during an open Council meeting.

## RECOMMENDATIONS

The IPC recommended that when Council conducts open meetings, it should not disclose any personal information, as defined in section 2(1) of the *Act*, relating to a specific individual, unless one of the exceptions to the prohibition against disclosure, cited in section 32 of the *Act*, applies.

## SECTIONS CONSIDERED

2(1), 32

## STATUTES CONSIDERED

municipal *Act*

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## INVESTIGATION I91-45M

Institution: A Hydro-Electric Commission

APRIL 29, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

## KEYWORDS

personinfo • collect

An employee of the institution complained that the institution had improperly collected personal information through psychological tests that some employees were required to take. These tests were externally administered by an office services agency on behalf of the institution.

## CONCLUSION

The IPC concluded that the collection was in accordance with the *Act*, as the testing of employees was considered by the institution to be necessary to the proper administration of a lawfully authorized activity involving employment screening practices. However, the IPC determined that proper notice had not been given, and that adequate measures had not been taken to protect the confidentiality of candidates' personal information in the care of the office services agency. It was also determined that employees should be given access to their own answers to the test.

## RECOMMENDATIONS

The IPC recommended that:

- Employees who are required to take psychological tests should be given a printout of their answers to the questions they responded to.
- Proper notice must be given to all employees, pursuant to section 29(2) of the *Act*.
- The institution should ensure, by way of a written contract with the agency, that provisions to protect the privacy of personal information be developed and followed. The IPC provided the institution with a number of specific requirements to be included in such a contract.

## SECTIONS CONSIDERED

2(1), 28(2), 29(2), 30(1), 36, and Ontario Regulation 517/90 3(1)

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## INVESTIGATION I91-46M

Institution: A Separate School Board

APRIL 1, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

## KEYWORDS

personinfo • collect

An employee of the institution complained that the institution was collecting employees' personal information by requiring them to submit their expense claims for prescribed medications to the institution prior to being reimbursed through their medical insurance plan.

## CONCLUSION

The IPC concluded that the information in question was personal information, and that the institution had no authority to collect the personal information, as employees could submit their expense claims directly to the insuring agent.

## RECOMMENDATIONS

1. The institution should notify the insuring agent to accept, effective immediately, any insurance claims sent directly to them from employees of the institution. The insuring agent should also be advised that all such information must be kept strictly confidential and not disclosed to the institution. The IPC should be advised of this notification immediately.
2. The institution should change its procedures to enable its employees to submit insurance claims directly to the insuring agent.
3. The institution should cease the collection of all personal information relating to the medical, dental and vision insurance claims of its employees.
4. The institution should destroy all collected insurance claims records in its custody and notify affected employees that such records are being destroyed.

The institution was asked to provide the IPC with proof of compliance with the recommendation 2, 3, and 4 within six months of receiving the report.

## SECTIONS CONSIDERED

2(1), 28(2), 46(b), s 3(2) of Regulation 517/90

#### STATUTES CONSIDERED

Section 33 of Bill 208, *An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act*.

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#### INVESTIGATION I91-47M

Institution: A Regional Municipality

MARCH 4, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • personinfo

The complainant stated that his privacy had been breached when a noise study, which identified individuals including himself, was disclosed by a regional municipality for public viewing.

#### CONCLUSION

The IPC concluded that since the noise study had been disclosed in 1990, and the *Act* did not come into force until January 1, 1991, this disclosure predated the *Act*, and therefore fell outside of the Commissioner's jurisdiction.

#### RECOMMENDATIONS

Although the disclosure predated the proclamation of the *Act*, the IPC nonetheless advised the regional municipality of the relevant sections of the *Act* involving the protection of personal privacy. The IPC further advised the regional municipality that in future, before disclosing any records containing personal information, it must first sever all personal identifiers contained in the records, unless one of the exceptions cited in section 32 of the *Act* applies.

#### SECTIONS CONSIDERED

2(1), 32

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#### INVESTIGATION I91-55M

Institution: A Municipal County

MARCH 24, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • use • disclose

An individual complained that a municipal county used and disclosed his personal information when it sent a carbon copy of a letter addressed to him, to the Treasurer of a municipal township.

#### CONCLUSION

The IPC concluded that the information in question was "corporate" rather than "personal information", as defined in section 2(1) of the *Act*. Thus, Part II of the *Act* which deals with the collection, retention, use and disclosure of personal information, did not apply. On that basis, the IPC concluded that the municipal county did not use or disclose personal information, contrary to Part II of the *Act*.

#### SECTIONS CONSIDERED

2(1), 31, 32,

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#### INVESTIGATION I91-56M

Institution: A Municipal Township

MARCH 26, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that a municipal township disclosed his personal information when it sent a carbon copy of a letter addressed to him, to the solicitor of the institution.

#### CONCLUSION

The IPC concluded that the institution was permitted to consult with its solicitor on matters related to the *Act*. Further, we were of the view that it was not unreasonable for the complainant to expect that his personal information may be disclosed to the institution's solicitor when a request for information was filed with the institution.

#### SECTIONS CONSIDERED

2(1), 32,

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#### INVESTIGATION I91-60M

Institution: A Municipal Corporation

APRIL 9, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • activity • available • by-law • maillist

An individual complained that the institution had breached his privacy by disclosing his name and address from one of its mailing lists. In response to the complaint, the institution provided the IPC with a copy of a policy which it had developed, regarding the creation, use and disclosure of mailing lists.

#### CONCLUSION

The IPC reviewed the policy to ensure its consistency with the *Act*, and found that the policy had comprehensively addressed the privacy provisions of Part II. However, the IPC made a number of comments for the institution's consideration regarding the institution's authority to collect the personal information which would be contained in the mailing list, and the criteria which the institution had proposed in determining whether a mailing list should be a public record.

#### SECTIONS CONSIDERED

2(1), 27, 28(2)



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## INVESTIGATION I91-62M

Institution: A Municipal Village

MARCH 27, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

An individual complained that a municipal village disclosed his identity as the requester of an access request, to a third party, who was the subject of the request.

The IPC reviewed:

- the notice which was sent to the third party in accordance with section 21 of the *Act*; and
- the institution's record of the third party's verbal response to the notice.

The IPC did not find any information in these documents which identified the complainant.

### CONCLUSION

Based upon the above information and the fact that the complainant was unable to provide any evidence on this matter, the IPC concluded that the institution had not disclosed the complainant's personal information.

### SECTIONS CONSIDERED

2(1), 32,

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## INVESTIGATION I92-01M

Institution: A Municipal Community and Social Services Department

APRIL 30, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information to third parties, without his consent.

The IPC determined that the disclosures in question related to a law enforcement matter.

### CONCLUSION

The IPC concluded that the complainant's personal information had been disclosed by the institution in accordance with Section 32, to aid an investigation into a law enforcement matter. Therefore, the disclosure was made in accordance with the *Act*.

### SECTIONS CONSIDERED

2(1), 32

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## INVESTIGATION I92-05M

Institution: A Municipal County

MARCH 6, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclose • personinfo

An individual complained that a municipal county disclosed his personal information when it sent a carbon copy of a letter addressed to him, to the Freedom of Information and Privacy Co-ordinator of a provincial ministry.

### CONCLUSION

The IPC concluded that the information in question was "corporate" rather than "personal information", as information is defined in section 2(1) of the *Act*. Thus, Part II of the *Act* which deals with the collection, retention, use and disclosure of personal information, did not apply. On that basis, the IPC concluded that the municipal county did not disclose personal information contrary to Part II of the *Act*.

### SECTIONS CONSIDERED

2(1), 32

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## INVESTIGATION I92-09M

Re: A Municipality

MARCH 25, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • public

An individual complained that a municipality had improperly disclosed his property tax arrears to a local newspaper.

### CONCLUSION

The IPC determined that property tax arrears were public records. Thus Part II of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply.

### SECTIONS CONSIDERED

2(1), 27

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## INVESTIGATION I92-10M

Institution: A School Board

MARCH 27, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

An individual complained that the school board had disclosed her personal information (her home address) to other employees without her permission. The school board stated that it had written to the complainant in her official capacity.

### CONCLUSION

The IPC determined that the school board had disclosed the complainant's personal information, contrary to the provisions of the *Act*, when it had addressed a letter to her, excluding her title and the name of the association she represented.

#### RECOMMENDATIONS

The IPC recommended that the school board establish stricter procedures to ensure compliance with section 32 of the *Act*.

#### KEY SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-17M

Institution: A Municipal Board of Education

MAY 1, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed her Social Insurance Number (SIN) without her consent, by including her SIN on seniority lists that were posted in the institution.

The IPC determined that the lists containing the SIN had been posted as the result of an error.

#### CONCLUSION

The IPC concluded that the complainant's personal information had been disclosed by the institution. However, the institution has taken adequate steps to ensure that such a disclosure does not occur in the future.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-21M

Institution: A Municipality

MAY 8, 1991

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

A municipal official complained that another municipal official had disclosed his personal information during a public meeting. A local newspaper subsequently reported the matter in one of its columns.

#### CONCLUSION

The IPC considered all the circumstances of the case and the interests of all parties involved. It was decided that the incident required no further investigation. Contact was, however, made with the institution, which was asked to ensure that its officials and staff be made aware of the privacy requirements of the *Act*.

#### RECOMMENDATION

The institution was advised to ensure that its elected officials and staff be fully apprised of the privacy provisions of the *Act*.

#### KEY SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-23M

Institution: A Municipal Board

APRIL 7, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution disclosed his personal information when it posted two notices containing his tax arrears information.

#### CONCLUSION

The IPC concluded that the tax arrears information related to a property, and not to an identifiable individual. Therefore, it was not personal information as defined by section 2(1) of the *Act*. Thus, Part II of the *Act* did not apply, and the institution disclosed the information in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 32,

*\* The Office of the Information and Privacy Commissioner has been working with the Ministry of Transportation to find solutions to the potential privacy invasion problems associated with the release of personal information from the institution's databases. Accordingly, certain compliance investigations have similar conclusions.*

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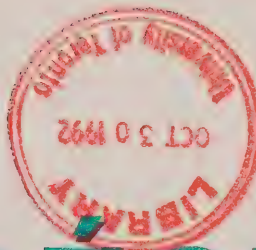


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# IPC PRECIS



HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## HIGHLIGHTS OF ORDERS

These highlights are prepared for the purposes of convenience only. For accurate reference, refer to the official orders of the Information and Privacy Commissioner, available from Publications Ontario at 1-800-668-9938. Please note: Orders are marked Order No. "P" to denote provincial orders and Order No. "M" to denote municipal orders.

### ORDER P-306 APPEAL 900585

Institution: Ministry of the Environment

JUNE 3, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

law enforcement

The appellant requested access to records related to the alleged connection of three settling pits to a municipal sewer system.

The head advised the appellant that a videotape did not exist, granted access to photographs, and partial access to two occurrence reports. The head denied access to three other occurrence reports and severed portions of a witness statement under sections 14(1)(a), (b) and (f) and 21 of the *Act*. During the course of the inquiry, the institution withdrew its application of sections 14(1)(b) and 21.

#### ORDER

The head's decision was upheld.

Prosecutions under particular sections of the *Environmental Protection Act* and the *Ontario Water Resources Act* qualify as "law enforcement matters" for the purposes of section 14(1)(a) of the *Act*. The information contained in the records represented the anticipated evidence of subpoenaed witnesses, and premature disclosure of the records could reasonably be expected to interfere with a law enforcement matter [section 14(1)(a)].

#### SECTIONS CONSIDERED

2(1), 14(1)(a)

#### PREVIOUS ORDERS CONSIDERED

188, P-225

### ORDER P-307 APPEAL 900633

Institution: Ministry of Skills Development

JUNE 4, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

appeal • time limit • Commissioner  
• powers and duties • personal  
information • mailing list • unjustified  
invasion of • personal privacy

The appellant requested access to a list of the names and addresses of hairstyling apprentices registered with the institution.

The head indicated that access to the names of the apprentices was available, but denied access to the addresses under

## AT A GLANCE

### ORDERS

Archives of Ontario, P-316  
Carelton Board of Education, M-27  
City of Kitchener, M-21  
City of Sudbury, M-30  
City of Toronto, M-24, M-25  
Corporation of the City of Oshawa, M-20, M-31  
Etobicoke Board of Education, M-29  
Management Board of Cabinet, P-334  
Metropolitan Toronto Police, M-28  
Midland Public Utilities Commission, M-32  
Ministry of the Attorney General, P-308, P-327, P-341, P-344  
Ministry of Community and Social Services, P-325  
Ministry of Consumer and Commercial Relations, P-309, P-318, P-319, P-338  
Ministry of Correctional Services, P-321, P-326, P-339  
Ministry of the Environment, P-306, P-310, P-311, P-320, P-345  
Ministry of Financial Institutions, P-314, P-323, P-331, P-342  
Ministry of Government Services, P-312  
Ministry of Health, P-324, P-333, P-336, P-340  
Ministry of Housing, P-337  
Ministry of Skills Development, P-307  
Ministry of the Solicitor General, P-313, P-315, P-328, P-343  
Municipality of the Township of Tiny, M-19  
Ontario Crown Employees  
Grievance Settlement Board, P-332  
Ontario Human Rights Commission, P-322, P-329, P-330  
Ontario Hydro, P-317, P-335  
Regional Municipality of Sudbury, M-26  
Town of Gravenhurst, M-23  
Town of Penetanguishene, M-33  
Windsor Police Service, M-22



section 21 of the *Act*.

The requester had filed two requests for the same information. Because the requests were identical, the head did not consider the second request to be a new request, and counted the time for filing an appeal 30 days from the date of response to the first request. As a result, the head challenged the Commissioner's authority to hear the appeal.

#### ORDER

The head was ordered not to disclose the names contained in the record, and the head's decision not to disclose the addresses was upheld.

By its course of conduct, the institution was found to have treated the appellant's second request as a new request and therefore the institution's second letter was the decision at issue, notwithstanding that it reiterated a position taken at an earlier date. The appeal was filed within 30 days of the second letter, and the Assistant Commissioner therefore had the authority to review the decision of the head.

The names of the apprentices had not been disclosed despite the head's decision to do so, because the appellant had not paid the fee deposit requested by the head. Because the personal information exemption [section 21] is mandatory and the *Act* requires the Commissioner to review all portions of the head's decision, the Assistant Commissioner also reviewed the head's decision to disclose the names.

The names and addresses qualified as the personal information of the apprentices. Cosmetic care of the human body, and marketing activity were found not to be relevant considerations. The names and addresses were provided to the institution implicitly in confidence [section

21(2)(h)], and disclosure of the names and addresses and names alone would constitute an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 21, 50(2), 54(1)

#### PREVIOUS ORDERS CONSIDERED

202

### ORDER P-308

#### APPEAL P-910028

Institution: Ministry of the Attorney General

JUNE 5, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

discretion • refusal to confirm or deny existence of record • law enforcement • wiretap application

The appellant requested access to wiretap applications pertaining to him. The institution refused to confirm or deny the existence of responsive records under section 14(3) of the *Act*. In Interim Order P-262, the Assistant Commissioner concluded that he had been provided with insufficient information to determine whether the head had properly exercised his discretion under sections 14(3) and 49(a), and ordered the head to reconsider the exercise of discretion and provide additional representations on the issue.

#### ORDER

The head's decision was upheld.

Additional representations were provided by the institution, and the Assistant Commissioner decided not to interfere with the exercise of discretion in the circumstances of the appeal.

### ORDER P-309

#### APPEAL P-910085

Institution: Ministry of Consumer and Commercial Relations

JUNE 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

mailing list • personal information • unjustified invasion of • personal privacy

The appellant requested continuing access to a list of the names, dates of birth and addresses of all babies born in Ontario in 1991. The institution denied access to the responsive records under section 21 of the *Act*.

During mediation, the appellant narrowed the time frame of his request to the period of January 1 to January 17, 1991.

#### ORDER

The head's decision was upheld.

The records contained the personal information of both the babies and the mothers. The name, address and date of birth of an individual do not relate to that individual's medical history [section 21(3)(a)]. The promotion of informed choice in the purchase of goods and services [section 21(2)(c)] is not intended to be relevant to the provision of mailing lists for marketing purposes. Unfair exposure to pecuniary or other harm [section 21(2)(e)] and high sensitivity [section 21(2)(f)] were also not relevant considerations. Individuals registering the information would reasonably expect that the information would remain confidential [section 21(2)(h)], and therefore disclosure of the information was found to constitute an unjustified invasion of personal privacy.





**SECTIONS CONSIDERED**

2(1), 21

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**ORDER P-310**

**APPEAL P-910938**

Institution: Ministry of the Environment

JUNE 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

solicitor client privilege • for use in giving legal advice

The appellant requested access to advice given to an employee of the institution by the institution's legal department regarding the need or obligation to take into account the official plan for the City in determining whether or not to issue a holding tank/septic tank approval.

The institution denied access to the record under section 19 of the *Act*.

**ORDER**

The head's decision was upheld.

The parties agreed that the record was a written communication between a client and a legal adviser which was directly related to giving legal advice. The communication was found to be of a confidential nature, and was properly exempt under section 19.

**SECTIONS CONSIDERED**

19

**PREVIOUS ORDERS CONSIDERED**

49

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**ORDER P-311**

**APPEAL P-910188**

Institution: Ministry of the Environment

JUNE 9, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

solicitor client privilege • crown counsel  
• in contemplation of or for use in litigation • lawyers brief

The appellant requested access to a copy of the report of an investigation conducted by the institution's Investigations and Enforcement Branch.

The institution denied access to the record under section 19 of the *Act*.

**ORDER**

The head was ordered to disclose the record to the appellant.

The record was not a communication between a client and a legal advisor, there was no evidence to indicate that the record was of a confidential nature, and the institution failed to establish that the record was "created or obtained especially for a lawyer's brief". The record was not prepared by or for Crown counsel. Accordingly, section 19 did not apply.

**SECTIONS CONSIDERED**

19

**PREVIOUS ORDERS CONSIDERED**

49, 210

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**ORDER P-312\***

**APPEAL P-910875**

Institution: Ministry of Government Services

JUNE 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • danger to safety or health • unjustified invasion of • personal privacy

The appellant requested access to a copy of his personnel file including copies of all documentation of allegations made

against him relating to an employment matter.

The institution granted access to his personnel and payroll records. The institution denied access to the records relating to the allegations made against him under sections 14(1)(b) and (e), 14(2)(c), 20, 21 and 49(b) of the *Act*.

The institution withdrew its claims under sections 14(1)(b) and (e) and 14(2)(c) during the inquiry.

**ORDER**

The head's decision was partially upheld.

The records contained the personal information of the appellant, and of the appellant and other individuals.

While some of the information contained in the records may be disturbing to some individuals, the institution did not provide sufficient evidence to establish that disclosure of the information to the appellant could reasonably be expected to seriously threaten the safety or health of any person [section 20].

Evidence which would establish that the records were compiled and were identifiable as part of an investigation by the Ontario Provincial Police into a possible violation of law [section 21(3)(b)] was not provided. The information could be characterized as highly sensitive [section 21(2)(f)], some of the information had been provided in confidence [section 21(2)(h)], would not unfairly damage the reputation of any person referred to in the record [section 21(2)(i)], and was not relevant to a fair determination of the appellant's rights [section 21(2)(d)].

Certain of the records were summaries of portions of a hearing conducted pursuant to regulations made under the *Public Service Act* which the appellant was enti-

tled to attend and at which he would have been provided with full and fair disclosure of the facts, and the disclosure of these records was found not to be an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 20, 21

#### PREVIOUS ORDERS CONSIDERED

37, 99, 188

### ORDER P-313 APPEAL P-910181

Institution: Ministry of the Solicitor General

JUNE 11, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

The appellant requested access to a copy of any medical or psychological reports, any search and seizure warrants, any signalitic cards or other records in the custody or control of the Kincardine or Walkerton Ontario Provincial Police.

The institution advised the appellant that the records did not exist.

#### ORDER

The institution's search was reasonable.

The institution clarified the appellant's request, completed searches at both the Walkerton and Kincardine detachments of the Ontario Provincial Police, and contacted an officer who was familiar with an occurrence involving the appellant.

### ORDER P-314 APPEAL 900275

Institution: Ministry of Financial Institutions

JUNE 11, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • financial information • "supplied" • "in confidence" • harm • competitive position • undue loss or gain • similar information no longer supplied

The appellant requested access to a copy of records that a particular trust company filed with the institution between May 1985 and October, 1988.

The institution denied access to the records under sections 17(1)(b) and (c) of the *Act*. During the inquiry, the trust company raised the application of section 17(1)(a) of the *Act*.

#### ORDER

The head's decision was upheld.

The records contained financial information supplied implicitly in confidence to the institution pursuant to the provisions of the *Loans and Trust Corporations Act*. Disclosure of the information could reasonably be expected to prejudice the competitive position and/or interfere with the trust company's negotiations [section 17(1)(a)]. Disclosure could also reasonably be expected to result in undue gain to the company's competitors [section 17(1)(c)], but would not result in similar information no longer being supplied to the institution because of the statutory reporting requirements of the *Loans and Trust Corporations Act* [section 17(1)(b)].

#### SECTIONS CONSIDERED

17

#### PREVIOUS ORDERS CONSIDERED

36, 47, 68, 204, P-246 and P-249

### ORDER P-315 APPEAL P-910484

Institution: Ministry of the Solicitor General

JUNE 16, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • law enforcement • report

The appellant requested access to information relating to himself and a number of named individuals and companies.

The institution initially refused to confirm or deny the existence of any responsive records, citing section 14(3), 21(5) and 49(a) of the *Act*. During the inquiry, the institution withdrew its claims under sections 14(3) and 21(5) and granted partial access to the one responsive record. Access to the remainder of the record was denied under sections 14(1)(g), 14(2)(a), 15(b) and 21 of the *Act*.

#### ORDER

The head's decision was upheld.

The parts of the record withheld from the appellant contained personal information of individuals other than the appellant, except for one sentence which contains the personal information of the appellant.

The record was a formal statement or account of the results of Royal Canadian Mounted Police inquiries and/or corporate searches regarding various persons and companies, which was prepared in the course of law enforcement by an agency which has the function of enforcing compliance with a law [section 14(2)(a)]. The portion of the record which contained the personal information of the appellant qualified for exemption under section 14(2)(a) and was properly exempt under section 49(a).

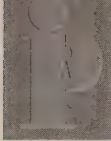
#### SECTIONS CONSIDERED

2(1), 14(2)(a), 49(a)

#### PREVIOUS ORDERS CONSIDERED

38, 170, 200





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## ORDER P-316 APPEAL P-920009

Institution: Archives of Ontario

JUNE 16, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • law enforcement

The appellant requested access to a memo describing incidents of alleged inappropriate behaviour involving staff and wards of the Grandview Training School, and the actions taken by the Ministry of Correctional Services in respect of each incident.

The institution granted partial access to the record. Access to the remaining portion of the record was denied under section 21 of the *Act*. During the inquiry, the institution raised the application of sections 14(1)(a) and (b) of the *Act*.

### ORDER

The head was ordered to disclose the record to the appellant.

The parts of the record withheld from the appellant did not contain information which related to identifiable individuals. The institution did not provide sufficient evidence to establish that information otherwise available to the appellant, if combined with the severed information, would bring the severed information within the definition of personal information of any identifiable individual.

Investigations undertaken by the Waterloo Regional Police and the Ontario Provincial Police fall within the meaning of law enforcement as defined in the *Act*. However, the institution did not provide sufficient evidence to establish that disclosure of the record could reasonably be expected to interfere with a law enforcement matter or investigation [sections 14(1)(a) and (b)].

### SECTIONS CONSIDERED

2(1)

### PREVIOUS ORDERS CONSIDERED

188

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## ORDER P-317 APPEALS P-920092 AND P-920095

Institution: Ontario Hydro

JUNE 18, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

reasonable steps to locate record

The appellant requested access to a map relating to the location of telephone company equipment prior to and after February 8, 1935 and August 14, 1951, and illustration on the map of the direction in which high voltage electrical current flowed through the lines marked on the map on and prior to August 14, 1951.

The institution advised the request that records responsive to his request did not exist.

### ORDER

The institution's search was reasonable.

The institution searched relevant files and consulted with appropriate individuals in other program areas of the institution. The person who conducted the search provided an explanation as to why the information contained on the various maps prepared by the institution would not contain the type of information requested by the appellant.

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## ORDER P-318 APPEAL P-910661

Institution: Ministry of Consumer and Commercial Relations

JUNE 19, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • name of affected person • personal information bank • unjustified invasion of • personal privacy • third party information • commercial information

An individual requested access to the name of the person who had mentioned his name in connection with the Toronto Branch of the Star Trek Fan Club and the substance of any remarks made by that person about him. The institution decided to grant access to the responsive records, and notified the appellant, whose name appeared in the records, of this decision.

### ORDER

The head's decision was upheld, subject to the severance of unresponsive information.

The appellant claimed that the records contained commercial information (section 17), but the information did not qualify as commercial information and, therefore, did not qualify for the section 17 exemption.

The appellant claimed that the records contained his personal information, which he expected would be treated confidentially by the institution. The information was collected and maintained specifically for the purpose of creating a record available to the general public, or was identical to information collected and maintained for that purpose, therefore disclosure would not constitute an unjustified invasion of privacy.

### SECTIONS CONSIDERED

2(1), 17(1), 21(1)(c), 21(1)(f)

### PREVIOUS ORDERS CONSIDERED

36, 179

## ORDER P-319 APPEAL P-910660

Institution: Ministry of Consumer and  
Commercial Relations

JUNE 19, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • name of affected  
person • personal information bank  
• unjustified invasion of • personal privacy  
• third party information • commercial  
information

An individual requested access to the name of the person who had mentioned her name in connection with the Toronto Branch of the Star Trek Fan Club and the substance of any remarks made by that person about her. The institution decided to grant access to the responsive records, and notified the appellant, whose name appeared in the records, of this decision.

### ORDER

The head's decision was upheld, subject to the severance of unresponsive information.

The appellant claimed that the records contained commercial information (section 17), but the information did not qualify as commercial information and, therefore, did not qualify for the section 17 exemption.

The appellant claimed that the records contained his personal information, which he expected would be treated confidentially by the institution. The information was collected and maintained specifically for the purpose of creating a record available to the general public, or was identical to information collected and maintained for that purpose, therefore disclosure would not constitute an unjustified invasion of privacy.

### SECTIONS CONSIDERED

2(1), 17(1), 21(1)(c), 21(1)(f)

### PREVIOUS ORDERS CONSIDERED

36, 179

## ORDER P-320 APPEAL 900629

Institution: Ministry of the Environment

JUNE 22, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

minutes • continuing access • advice to  
government • economic or other interests  
of Ontario

The appellant requested access to minutes of Division Heads Committee and Management Committee meetings held between September 1989 and September 1990 in which the discharge of N,nitrosodimethylamine from or to the Elmira Sewage Treatment Plant or by a named company was considered, and any reports, memoranda or other documents reviewed or discussed at such meetings. The request, if granted, was to continue to have effect until November, 1990.

The institution granted partial access to the records, subject to severances made under sections 13, 18(1)(g) and 19 of the *Act*. During the course of the inquiry, the institution withdrew its section 19 exemption claim.

### ORDER

The head's decision was partially upheld.

Four of the severances contained or would reveal a recommendation by and the advice of a public servant and qualified for exemption under section 13. The remaining two severances did not contain advice and did not qualify for the section 13 exemption.

The remaining two severances referenced items that the institution would make a decision about in the future, and could not be properly characterized as plans, policies or projects so as to qualify for exemption under section 18(1)(g). The information in one of the severances was also contained in another record which was released by the institution during the course of the appeal.

### SECTIONS CONSIDERED

13, 18(1)(g)

### PREVIOUS ORDERS CONSIDERED

118, 141, P-229

## ORDER P-321 APPEAL P-920056

Institution: Ministry of Correctional  
Services

JUNE 24, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information file • right of  
correction

The appellant requested a correction of personal information contained in two documents entitled "Employee Separation/Work Performance Records". The request related specifically to the information contained under the headings "Reason for Separation", "Quality of Work", "Attendance and Punctuality", and "Would you re-hire this employee".

The institution denied the request for correction and invited the appellant to submit a statement of disagreement to be attached to the two records and to have the statement of disagreement forwarded to any person or agencies to whom the personal information was disclosed during the previous year.

### ORDER

The head's decision was upheld.



The information contained in the record qualified as the personal information of the appellant, however, the correction requested could only be accurately described as a substitution of opinion. The records accurately set out the views of the appellant's former supervisors.

**SECTIONS CONSIDERED**

2(1), 47(2)

**PREVIOUS ORDERS CONSIDERED**

186

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**ORDER P-322  
APPEALS 900351**

Institution: Ontario Human Rights  
Commission

JUNE 25, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • presumption of  
unjustified invasion of • personal privacy

The appellant requested access to specific documents related to his Ontario Human Rights Commission complaint.

The institution provided partial access to the records. Following mediation and inquiry, the institution was relying on exemptions under sections 14(1)(c), 21, 49(a) and (b) of the *Act* to withhold the remaining records or parts of records.

**ORDER**

The head's decision was upheld.

The information contained in nine of the records or parts of records qualified as the personal information of the appellant and other individuals, and information contained in five records or parts of records qualified as the personal information of other individuals only.

The records or parts of records were compiled and were part of an investiga-

tion into a possible violation of law, and satisfied the requirements for a presumed unjustified invasion of privacy [21(3)(b)]. The appellant did not establish that the personal information was relevant to a fair determination of his rights [21(2)(d)], and the personal information was properly exempt under section 21 or section 49(b).

**SECTIONS CONSIDERED**

2(1), 21, 47(1), 49(b)

**PREVIOUS ORDERS CONSIDERED**

20, 89, 178, 208, P-253, P-312

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**ORDER P-323  
APPEALS 900085, 900087 AND  
900088**

Institution: Ministry of Financial Institutions

JUNE 26, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

law enforcement • investigation report  
• confidential source • personal  
information • third party information  
• harm • similar information no longer  
supplied • competitive position • consent  
to access to • medical, psychiatric or  
patient records • presumption of  
• unjustified invasion of • personal privacy  
• deemed not to be presumption against  
disclosure • public information • Cabinet  
records

The appellant requested access to specific types of records related to two mortgage brokerage firms which had experienced financial difficulties and were placed in receivership by court appointment.

The institution provided access to three records, but denied access to all other records pursuant to sections 12(1)(e), 14(2)(a), 17(1)(b) and 21 of the *Act*. During the course of the inquiry, sections 12(1), 12(1)(b), 12(1)(c) and 14(1)(d) were raised by the institution as exemption claims.

**ORDER**

The head's decision was partially upheld.

In light of one of the affected party's willingness to disclose his identity, he was not considered a confidential source of information [14(1)(d)].

Six of the records were reports prepared in the course of law enforcement investigations and/or inspections by an agency which has the function of enforcing compliance with a law [14(2)(a)]. However, four of these records were prepared in the course of routine inspections by an agency which is authorized to enforce and regulate compliance with a particular statute of Ontario, and did not qualify for exemption [14(4)].

Because the affected party to which three of the records related was not resisting disclosure of the three records, section 17 did not apply to them. Four of the records contained information which had been the subject of public debate, and were provided pursuant to a statutory obligation. Therefore, disclosure could not significantly prejudice the competitive position of the firms [17(1)(a)] or result in similar information no longer being supplied [17(1)(b)].

The institution did not provide evidence to indicate that the matters had been considered by the Cabinet following the date of the decisions made by the Management Board of Cabinet or that the matters were to be addressed by the Executive Council or one of its Committees in the future and, therefore, sections 12(1)(c) and (e) did not apply.

Five of the records did not contain any specific policy options or recommendations and did not, therefore, qualify for exemption under section 12(1)(b).

Two of the records described the state of affairs with respect to the firms without referring to any involvement on the part of Cabinet or seeking any decision on the part of Cabinet and, therefore, did not qualify for exemption under section 12(1).

One of the affected parties consented to the disclosure of three of the records, and their disclosure, therefore, was not prohibited by section 21. Information related to the psychiatric history and financial activities of most of the individuals referred to in the records satisfied the requirements for a presumed unjustified invasion of personal privacy [sections 21(3)(a) and (f)].

Information which appeared to describe the finances, assets, liabilities, financial history and/or activities of two of the affected parties had been the subject of extensive publicity as well as discussion during the course of several criminal and civil court proceedings, and was not considered to be an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 12(1), 12(1)(b), 12(1)(c), 12(1)(e), 14(1)(d), 14(2)(a), 14(4), 17(1), 21

#### PREVIOUS ORDERS CONSIDERED

20, 36, 47, 48, 68, 73, 80, 101, 136, 166, 200, 204, 228

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### ORDER P-324 APPEAL 900277

Institution: Ministry of Health

JULY 2, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

pricing information • pharmaceutical information • content of decision letter  
• advice to government • law enforcement  
• investigation • report • confidential source

The appellant requested access to specific types of records related to inducements offered to drug manufacturers to pharmacists for the purchase of products listed in the Ontario Formulary.

The institution provided access to six of 88 responsive records. Access was denied to the remaining records pursuant to sections 13, 14, 19 and 21 of the *Act*. During the course of the inquiry, the institution disclosed 19 of the records and raised the application of section 17.

#### ORDER

The head's decision was upheld.

The institution's decision letter did not provide the appellant with a description of each record, and did not satisfy the requirements of section 29(1)(b). Because a more detailed description of the records was created by the Appeals Officer during the course of the appeal, a new notice of refusal was not required.

A draft document prepared by a public servant which contains a suggested course of action which will ultimately be accepted or rejected by the recipient during the deliberative process qualify for exemption under section 13(1).

The investigative processes under the *Ontario Drug Benefits Act* and the *Prescription Drug Cost Regulation Act* satisfied the requirements of the definition of law enforcement, and reports prepared in the course of such investigations qualified for exemption under section 14(2)(a).

The disclosure of records which contain strategies, procedures and specific drug industry investigation targets as well as other courses of action would have revealed techniques or procedures currently in use or likely to be used in law enforcement and qualified for exemption under section 14(1)(c).

Records which consisted of the complaints of individuals who supplied the institution with this type of information in confidence qualified for exemption under section 14(1)(d).

#### SECTIONS CONSIDERED

13, 14(1)(c), 14(1)(d), 14(2)(a), 29

#### PREVIOUS ORDERS CONSIDERED

158, 161, 200, P-235

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### ORDER P-325 APPEAL P-910272

Institution: Ministry of Community and Social Services

JULY 2, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

confidentiality provision in other *Act*

The appellant requested access to all information contained in the Child Abuse Registry which related personally to the appellant.

The institution denied access to the record pursuant to section 67(2) of the *Act*.

#### ORDER

The head's decision was upheld.

The requested record was part of the Child Abuse Registry, and as such was covered by section 75(6) of the *Child and Family Services Act*, which prevails over the access rights provided to the requester under the *Act*.

#### SECTIONS CONSIDERED

67(2)





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## ORDER P-326 APPEAL P-910788

Institution: Ministry of Correctional  
Services

JULY 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • narrowed request  
• custody or control • right to fair trial  
• solicitor client privilege

The appellant requested access to records relating to him, including notes of his supervisor taken in the context of an allegation made against him by another employee.

The institution denied access to the records pursuant to section 49(b) of the *Act*. During the course of the appeal, the appellant narrowed the scope of his request to the notes taken by his supervisor, excluding the personal information of individuals other than himself. The institution denied access to the records, adding sections 14(1)(f) and 19 of the *Act* as exemption claims.

### ORDER

The head was ordered to disclose the record to the appellant, subject to the severance of personal information of individuals other than the appellant.

The record was created by the supervisor during the course of her employment, and described events which took place at the workplace in the context of providing supervision to the appellant. As such, the record was properly considered to be in the custody and/or under the control of the institution pursuant to section 10(1) of the *Act*.

The supervisor was acting in her professional capacity as an employee of the institution and the appellant's supervisor

when the record was created, and the record could not, therefore, properly be categorized as "personal information" of the supervisor under section 2(1) of the *Act*. The record contained the personal information of the appellant only.

The institution did not provide adequate evidence to establish that the supervisor's right to impartial adjudication during the grievance proceeding would be compromised as a result of disclosure of the record and, therefore, the record was not exempt under section 14(1)(f) of the *Act*.

The record was not a communication between a client and a legal advisor, and evidence to support that the record was directly related to seeking, formulating or giving legal advice was not presented by the institution. The institution failed to establish that the record was prepared especially for a lawyer's brief, and it was not prepared by or for Crown counsel. Accordingly, the record did not qualify for exemption under the section 19 exemption.

### SECTIONS CONSIDERED

2(1), 10(1), 14(1)(f), 19

### PREVIOUS ORDERS CONSIDERED

48, 49, 113, 120, 139, 157, 192, 210, P-257

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## ORDER P-327 APPEAL P-910137

Institution: Ministry of the Attorney General  
(Office of the Public Trustee)

JULY 14, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

financial statement • public information

The appellant requested access to financial statements and other documents filed with the Public Trustee by the National Cancer Institute and the Canadian Can-

cer Society since 1982.

The institution denied access to the records pursuant to section 17 of the *Act*. During the course of the appeal, the representative of the Canadian Cancer Society and the National Cancer Institute expressed a willingness to disclose the records directly to the appellant. The institution withdrew its application of section 17 and raised section 22(a) as a new exemption.

### ORDER

The head was ordered to disclose the record to the appellant.

Revenue Canada's Charities Division confirmed that the records sought by the appellant are not available to the public. An affected party's willingness to provide the appellant with a copy of the records does not render them "currently available to the public". In order for a record to qualify for exemption under section 22(a), it must be published or available to the public generally, through a regularised system of access, such as a public library or government publications centre. The records did not qualify for exemption under section 22(a) of the *Act*.

An institution relying on section 22(a) has a duty to inform the requester of the specific location of the publicly available records, and to ensure that the information is actually available from the alternative source.

### SECTIONS CONSIDERED

22(a)

### PREVIOUS ORDERS CONSIDERED

123, 124, 191, 204

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## ORDER P-328 APPEAL P-910957

Institution: Ministry of the Solicitor General  
JULY 15, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

resume • personal information • severance  
• presumption of • unjustified invasion of  
• personal privacy

The appellant requested access to all curricula vitae, resumes, or applications received by the institution for a job competition, including those of the applicants invited for an interview, and the two successful applicants. The appellant also requested access to all material relating to the criteria used in selecting applicants for an interview for this competition.

The institution provided partial access to the record. Access to the remaining portions of the record was denied pursuant to sections 13(1) and 21 of the *Act*. During the course of the appeal, the appellant narrowed his request such that the application of section 13(1) was no longer an issue.

### ORDER

The institution's decision not to disclose the applications and resumes was upheld. The institution was ordered to disclose the "Qualifying Guide", with the identifying information severed.

By their very nature, applications and resumes qualify as personal information. Severance of certain categories of information would not be sufficient to render the application or resume no longer relating to an identifiable individual.

Following the severance of identifying characteristics from the "Qualifying Guide", the remaining information

would not meet the requirements of the definition of personal information.

Personal information contained in the applications and resumes related to employment or educational history, satisfying the requirements for a presumed unjustified invasion of personal privacy [21(3)(d)]. Disclosure of the personal information of the applicants was not necessary to subject the activities of the Government of Ontario to public scrutiny [21(2)(a)], and the appellant provided no evidence to indicate that a legal right affecting his interest was at issue, or that a proceeding which would deal with his rights was existing or contemplated. Therefore, the presumption of an unjustified invasion of the personal privacy of the applicants in this job competition was not rebutted.

### SECTIONS CONSIDERED

2(1), 21

### PREVIOUS ORDERS CONSIDERED

11, 20, 97, 99, P-273, P-282, P-312, M-7

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## ORDER P-329 APPEAL P-9200097

Institution: Ontario Human Rights  
Commission  
JULY 16, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • solicitor client  
privilege • for use in giving legal advice  
• Crown counsel • discretion

The appellant submitted a six part request for access to records related to his client's complaint with the Ontario Human Rights Commission alleging discrimination by a university.

The institution provided partial access to one record which was responsive to one

part of his request, and an answer or explanation with respect to three other parts of his request. The institution denied access to the remaining two records pursuant to sections 19 and 49(a) of the *Act*.

### ORDER

The institution's decision was upheld.

The records contained personal information of the appellant and other identifiable individuals.

The institution's legal counsel reviewed the complaint file, assessed the evidence and provided the institution with advice as to whether the evidence warranted a public inquiry and whether such a procedure was appropriate in the circumstances. The records were written communications of a confidential nature between a client and a client's legal counsel, which were directly related to seeking, formulating or giving legal advice. Further, the records were prepared by employees who qualify as Crown counsel and were prepared for the purpose of giving legal advice. As such, the records qualified for exemption under section 19. Nothing improper was found on review of the head's exercise of discretion.

### SECTIONS CONSIDERED

2(1), 19, 49(a)

### PREVIOUS ORDERS CONSIDERED

49, 210, M-2

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## ORDER P-330 APPEAL P-9200098

Institution: Ontario Human Rights  
Commission  
JULY 16, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • law enforcement  
• discretion





The appellant submitted a request for access to the Ontario Human Rights Commission Investigator's file regarding certain records related to his client's complaint with the Ontario Human Rights Commission alleging discrimination by a university.

The institution denied access to all responsive records pursuant to sections 14(1)(a) and (b) and applied sections 13(1), 14(2)(a) and 21 of the *Act* to certain records as well.

#### ORDER

The institution's decision was partially upheld.

Portions of the records contained the personal information of the appellant, of other individuals, or of the appellant and other individuals. The remaining portions of the records did not contain personal information.

The records were generated in the course of the institution's investigation of a complaint under the *Ontario Human Rights Code*, which is properly considered a law enforcement matter. Because the investigation may lead to proceedings before a Board of Inquiry under the *Code*, it is properly considered a law enforcement proceeding. Because the appellant has applied for reconsideration of his complaint, it is not possible to conclude that the institution's investigation has been completed until either a Board of Inquiry has been appointed or the reconsideration process has been completed. The portions of the records which could reasonably be expected to interfere with the complaint investigation qualified for exemption under sections 14(1)(a) and (b). The portions of the records which contained information which related to various administrative activities in the processing of the complaint were not sufficiently connected to the actual investigation to

satisfy the requirement for exemption under sections 14(1)(a) or (b). Because the institution did not claim any other exemptions for the information that was found not to qualify for exemption under section 14(1)(a) or (b), its disclosure was ordered.

Nothing improper was found on review of the head's exercise of discretion.

#### SECTIONS CONSIDERED

2(1), 14(1)(a), 14(1)(b), 49(a)

#### PREVIOUS ORDERS CONSIDERED

89, 178, 200, P-221, P-253, P-258, P-322

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### ORDER P-331 APPEAL P-910115

Institution: Ministry of Financial Institutions

JULY 16, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

Cabinet records

The appellant requested access to records relating to studies commissioned and considered by the government on automobile insurance.

The institution provided the appellant with a list of studies commissioned by the government, including the names of the individuals or companies that prepared the studies and the dates that the studies were commissioned and presented to the government. The institution also provided the appellant with a bibliography outlining the studies being considered by the government. The institution denied access to copies of the studies pursuant to sections 12, 13, 15, 17, 18 and 19 of the *Act*. During the course of the appeal, the institution also disclosed a list of the costs of the studies, and withdrew claim under section 17.

#### ORDER

The institution's decision was upheld.

One of the records was placed before the Cabinet Committee on Automobile Insurance and was discussed by that committee on two occasions. The substance of this document was also considered by the Policy and Priorities Board and by Cabinet.

The remaining records were background or working papers which were summarized for consideration by Cabinet. In this case, all of the records were incorporated into submissions which were made to the Cabinet Committee on Automobile Insurance, the Policy and Priorities Board or directly to Cabinet. Because the content of the records was used as the basis for these submissions, their disclosure would permit the drawing of accurate inferences with respect to the substance of deliberations of an Executive Council or its committees [section 12(1)].

#### SECTIONS CONSIDERED

12(1)

#### PREVIOUS ORDERS CONSIDERED

22, P-226

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### ORDER P-332 APPEAL 900371

Institution: Ontario Crown Employees  
Grievance Settlement Board

JULY 20, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • name of affected person • address • consent to access to • unjustified invasion of • personal privacy • labour relations information • danger to safety or health • public interest override

The appellant requested access to records relating to a grievance proceeding in which he had appeared as a witness and

presented evidence.

The institution denied access to the records pursuant to sections 14(1)(e), 17(1)(d), 20 and 21 of the *Act*. During the processing of the appeal, the appellant narrowed the scope of his request and the institution provided partial access to records such that the only information remaining at issue were the names and addresses of the grievors.

#### ORDER

The institution's decision was partially upheld.

The *Act* applies to records which are in the custody or under the control of the institution, regardless of whether the records originated from the appellant and whether or not copies of the records were previously provided to the appellant.

Home addresses of identifiable individuals are personal information of the individual. Names which appear in records which contain other personal information (i.e. home address, the fact that an individual has filed a grievance) are also personal information.

Addresses of individuals who are/were employed in a maximum security division of a psychiatric hospital are properly considered highly sensitive [21(2)(f)], and disclosure of these addresses would constitute an unjustified invasion of personal privacy pursuant to section 21 of the *Act*.

Where an individual does not object to the disclosure of his or her name, disclosure of the name would not be an unjustified invasion of personal privacy.

Where the appellant knows the individual's name from his everyday experience, disclosure of the name would not be an unjustified invasion of personal

privacy, nor would it satisfy the requirements for exemption under sections 14(1)(e), 17(1)(d) or 20 of the *Act*.

In the circumstances of this appeal, there was no compelling public interest in disclosing the home addresses which clearly outweighed the purpose of protection of personal privacy under section 21 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 14(1)(e), 17(1)(d), 20, 21, 23

#### PREVIOUS ORDERS CONSIDERED

68

### ORDER P-333 APPEAL P-910008

Institution: Ministry of Health

JULY 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • notice of refusal  
• delegation of power or duty

The appellant requested access to all correspondence between a named doctor, the Psychiatric Patient Advocate Office and a named Patient Advocate.

The institution granted partial access to the records, claiming section 21 of the *Act* to deny access to the remainder. During the processing of the appeal, the Patient Advocate consented to the release of information related to her, and those parts of the record were disclosed to the appellant.

#### ORDER

The institution was ordered to disclose the records to the appellant.

The institution's decision was not in accordance with its delegation of authority, therefore the institution failed to give proper notice under sections 26 of the

*Act*, and the institution was deemed to have refused access to the records.

The doctor was acting in his official capacity as an employee of the institution, and views and opinions of the doctor about the appellant and others cannot properly be categorized as "personal information" of the doctor. Because the records do not contain personal information, and no other exemption applies, the records were ordered disclosed in their entirety.

#### SECTIONS CONSIDERED

2(1), 26, 29(4), 62(1)

#### PREVIOUS ORDERS CONSIDERED

113, 139, 157, P-257, P-326

### ORDER P-334 APPEAL P-910861

Institution: Management Board of Cabinet

AUGUST 5, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

Cabinet records • previous disclosure of similar record

The appellant requested access to a copy of a report concerning rebate and tax sharing arrangements between the racing industry and the provincial government.

The institution denied access to the record under section 12 of the *Act*.

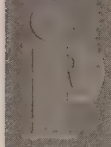
#### ORDER

The head's decision was upheld.

The record contained policy recommendations, and provided evidence to establish that Cabinet minutes exist which confirms that Cabinet considered the record at its meeting on April 13, 1988.

There was nothing improper or inappropriate in the head's exercise of discretion





against seeking the consent of Cabinet to disclose the record.

Whether the record was or was not disclosed to the author of an article in a periodical is not a relevant consideration under the current wording of the Cabinet records exemption.

#### SECTIONS CONSIDERED

12(1)(b)

#### PREVIOUS ORDERS CONSIDERED

22, 73

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### ORDER P-335 APPEAL P-920176

Institution: Ontario Hydro

AUGUST 5, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

notes • reasonable steps to locate record  
• record does not exist

The appellant requested access to two performance appraisals of himself, and a copy of notes taken at a meeting attended by the appellant and other employees of the institution.

The institution granted access to the performance appraisals, and informed the appellant that notes of the meeting did not exist.

#### ORDER

The institution's search was reasonable.

The institution outlined the steps taken to locate the notes, and provided an affidavit signed by the alleged author of the notes. While acknowledging that he had created notes at the meeting, the author provided a credible explanation as to why the notes no longer existed. He also identified the areas which were searched in order to locate the notes. The appellant did not provide sufficient evi-

dence to support his claim that the notes were still in existence.

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### ORDER P-336 APPEAL P-911155

Institution: Ministry of Health

AUGUST 6, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

notes • reasonable steps to locate record  
• record does not exist

The appellant requested access to copies of all records regarding himself held in the Hospital Administrator's files for a specified period of time.

The institution granted full access to a number of records and partial access to others. The appellant believed that an additional responsive record, notes taken by the Administrator of a telephone conversation, existed.

#### ORDER

The institution's search was reasonable.

The institution identified the areas searched in order to locate the responsive records. The institution also provided an affidavit signed by the Administrator wherein he states that he remembers having the telephone conversation, but swears that he did not take any notes. The appellant did not provide sufficient evidence to support his claim that additional records exist.

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### ORDER P-337 APPEALS P-920103, P-920104, P-920105, P-920106 AND P-920107

Institution: Ministry of Housing

AUGUST 6, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

content of decision letter • record does not exist

The appellant requested access to records supporting two letters he had received from a Senior Program Administrator with the institution in response to previous inquiries regarding the Ontario Home Renewal Program for Disabled Persons, and records related to the exclusion of psychiatric patients from the program.

The institution provided access to what it felt were responsive records, and advised that records responsive to parts of the requests did not exist.

#### ORDER

The decision letters issued by the institution satisfied the requirements of sections 26 and 29(1)(a) of the *Act*.

Where access was granted, copies of the records which the institution felt were responsive to the request were provided. Where no responsive records existed, the appellant was advised of this fact and notified of his right to appeal. Identifying the particular pages of paragraphs that appear most directly responsive to the request would be of assistance to requesters, and offering additional explanations to requesters is consistent with the spirit of the *Act*.

#### SECTIONS CONSIDERED

26, 29(1)(a)

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### ORDER P-338 APPEALS P-910168

Institution: Ministry of Consumer and Commercial Relations

AUGUST 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

## KEYWORDS

law enforcement • refusal to confirm or deny existence of record • confidential source

The appellant requested access to the name of the person or persons who provided information to the Liquor Licence Board of Ontario which led to the investigation and copies of all written reports or briefs submitted to the LLBO on the subject.

The institution refused to confirm or deny the existence of any records, pursuant to section 14(3) of the *Act*. The institution advised the appellant that if any responsive records existed, access to them would be denied pursuant to sections 14(1)(a), (b), (c), (d), (g) and 14(2)(c) of the *Act*. The institution later abandoned reliance on sections 14(1)(g) and 14(2)(c).

## ORDER

The existence of responsive records was confirmed. The head was ordered to disclose one record. The head's decision not to disclose six records was upheld.

An institution relying on section 14(3) must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under section 14(1) or (2). An institution must provide detailed and convincing evidence that disclosure of the mere existence of the requested records would convey information to the requester which could compromise the effectiveness of a law enforcement activity. By simply confirming that records associated with an investigation exist, the institution is not required to confirm the content of the records. Rather the institution is required to provide a general description of each record, with enough detail so that the requester has an understanding of the types of records held by the institution.

The head did not provide sufficient evidence to show that disclosure of the fact that responsive records existed would convey information to the requester which would compromise the effectiveness of a law enforcement activity.

An investigation under the *Liquor Licence Act* qualifies as a "law enforcement" matter. The source of the information identified in two of the records specifically requested confidentiality, and this was confirmed by a statement in one of the records. Assurances of confidentiality given to the source by the Liquor Licence Board are also stated in one of the records. These two records qualified for exemption under section 14(1)(d).

Until the hearing process under the *Liquor Licence Act* is finalized, the investigation will not be complete. Records which could enable the parties under investigation to obstruct the course of the investigation and prosecution process qualified for exemption under section 14(1)(b).

## SECTIONS CONSIDERED

2(1), 14(1)(b), 14(1)(d), 14(3)

## PREVIOUS ORDERS CONSIDERED

139, 170

## ORDER P-339

### APPEALS P-910192

Institution: Ministry of Correctional Services

AUGUST 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

## KEYWORDS

personal information • refusal to confirm or deny existence of record • unjustified invasion of • personal privacy • economic or other interests of Ontario • competition

The appellant requested access to interview results and marks awarded to all involved in a competition, without iden-

tifying those involved, and records related to an investigation of the competition, if one took place, including the identity of those involved.

The institution denied access to certain responsive records pursuant to section 21 of the *Act*, and later added sections 18(1)(c) and (d) as new exemption claims with respect to the competition question and answer sheets. The institution refused to confirm or deny the existence of records related to an investigation pursuant to section 21(5) of the *Act*.

## ORDER

The existence of responsive records was confirmed. The head was ordered to disclose the question and answer sheets. The head's decision not to disclose records related to the investigation was upheld.

Information contained in competition question and answer sheets is not the type of information which section 18 was designed to protect.

An institution relying on section 21(5) must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. An institution must provide detailed and convincing evidence that disclosure of the mere existence of the requested records would convey information to the requester, and that disclosure of this information would constitute an unjustified invasion of personal privacy. By simply confirming that records associated with an investigation exist, the head is not confirming that any identifiable individual was investigated. Rather, the head is merely confirming that records associated with such a process exist, without indicating the parties involved. The head did not provide sufficient evidence to show that disclosure of the existence of records relating to an investigation would convey information to the requester which



would constitute an unjustified invasion of personal privacy.

Letters and notes related to an investigation qualified as personal information. Records which outline information about the administration of a competition are not properly considered part of any individual's employment history [21(3)(d)], however, they could properly be characterized as highly sensitive [21(2)(f)]. Disclosure of the records relating to the investigation would therefore constitute an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 18(1)(c), 18(1)(d), 21, 21(5)

#### PREVIOUS ORDERS CONSIDERED

203, 204, 229

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### ORDER P-340 APPEALS P-910633 AND P-920187

Institution: Ministry of Health

AUGUST 11, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • commercial information • "supplied" • "in confidence" • reasonable expectation of • harm • undue loss or gain • competitive position • burden of proof • representations in appeal

The appellant requested access to correspondence between the institution and five agencies, together with briefing notes, memoranda, records of telephone conversations, records of complaint and follow-up action pertaining to the five agencies.

The institution granted partial access to the responsive records, subject to severances under sections 17(1)(a) and (c) and 21 of the *Act*. During the course

of appeal, the issues were narrowed to the proper application of section 17(1).

#### ORDER

The head was ordered to disclose the records to the appellant, with personal information severed.

The linkage of names of various agencies to alleged illegal practices in one record is not sufficient to characterize this information as "commercial information".

The remaining records pertained or related to or dealt with commerce, and qualified as commercial information. These records were also supplied to the institution in confidence. The evidence provided by the institution and the affected person in support of the harms specified in sections 17(1)(a) and (c) was too speculative and remote to establish a reasonable expectation of sufficient prejudice to competitive position, or undue loss to the agency or gain to its competitors.

#### SECTIONS CONSIDERED

17(1)

#### PREVIOUS ORDERS CONSIDERED

179, P-318

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### ORDER P-341\* APPEALS 900171

Institution: Ministry of the Attorney General

AUGUST 12, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • unjustified invasion of • personal privacy • jurisdiction of Commissioner • discretion

The appellant requested access to a number of Supreme Court of Ontario court files and actions in which the appellant was the plaintiff.

The institution granted partial access to the responsive records, claiming sections 19, 21 and 22 of the *Act* to deny access. During the course of appeal, the scope of the appeal was narrowed to one letter from an insurance adjustment bureau to the law firm which was representing the institution in a court action involving the appellant. The institution claimed that the record was exempt pursuant to sections 19 and 49(a) of the *Act*.

#### ORDER

The head's decision was partially upheld.

A severed version of the record was originally included among the records disclosed by the institution in response to the appellant's request. The entire record was released, subject to the severance of one sentence, which was exempted under section 21 of the *Act*. During the course of the appeal, the institution arranged to have the record retrieved from the appellant, and denied further access to it. In responding to the original request, the designated head must be deemed to have either concluded that the record, with the exception of the section 21 severance, did not qualify for exemption, or chosen to exercise his discretion against claiming exemption under section 19.

The severed sentence contained the views or opinions of the affected person which related to matters other than the appellant, and thereby qualified as personal information of the affected person. The remainder of the record contained the personal information of the appellant only.

The severance did not contain information relevant to the appellant's contention that disclosure of his clinical record had taken place contrary to the *Mental Health Act*. The affected person supplied the information contained in the record

in confidence, and disclosure of the severance would constitute an unjustified invasion of the affected person's privacy.

**SECTIONS CONSIDERED**

2(1), 21, 30(1)

**PREVIOUS ORDERS CONSIDERED**

179, P-312, P-318

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**ORDER P-342**

**APPEALS P-910474**

Institution: Ministry of Financial Institutions

AUGUST 12, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

law enforcement • investigation report

The appellant requested access to all information relating to a review performed by the Ontario Securities Commission in response to a complaint made by the requester into the activities of a named stockbroker.

The institution denied access to the records under section 14(2)(a) of the *Act*.

**ORDER**

The head's decision was upheld.

Reports prepared by the Toronto Stock Exchange and the Ontario Securities Commission in the course of an investigation into a potential violation of the *Securities Act* qualify for exemption under section 14(2)(a).

**SECTIONS CONSIDERED**

14(2)(a)

**PREVIOUS ORDERS CONSIDERED**

30, 136, 200

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**ORDER P-343**

**APPEALS P-910012**

Institution: Ministry of the Solicitor General

AUGUST 13, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • presumption of  
• unjustified invasion of • personal privacy  
• relations with other governments

The appellant requested access to all information relating to investigations pertaining to himself. In particular, he sought access to information relating to his arson, fraud and murder investigations.

The institution granted partial access to the records, and claimed exemptions under sections 14(1)(c) and (e), 14(2)(a), 15(b), 21, 49(a) and/or 49(b) of the *Act*.

**ORDER**

The head's decision was partially upheld.

Parts of the record contained the personal information of the affected persons only. These parts of the record were compiled as part of an investigation into a possible violation of law, and therefore the requirements for a presumed unjustified invasion of privacy were met. The arguments in favour of disclosing these parts of the record were not sufficient to outweigh the presumed unjustified invasion of personal privacy of the affected persons.

Parts of the record contained the personal information of the appellant and other identifiable individuals. These parts of the record were also compiled as part of an investigation into a possible violation of law, and disclosure would constitute an unjustified invasion of the personal privacy of the affected persons.

Part of the record contained the personal information of the appellant only. This part of the record contained information that was forwarded to the institution by the Royal Canadian Mounted Police on a confidential basis, and therefore quali-

fied for exemption under section 15(b) of the *Act*.

Parts of the record did not contain personal information. Disclosure of one of these parts would reveal information received by the institution in confidence from the Department of Justice, and therefore qualified for exemption under section 15(b) of the *Act*. The institution did not claim an exemption for the remaining parts of the record, and was ordered to disclose these parts.

**SECTIONS CONSIDERED**

2(1), 15(b), 21, 49(a), 49(b)

**PREVIOUS ORDERS CONSIDERED**

20, 210

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**ORDER P-344**

**APPEAL P-911135**

Institution: Ministry of the Attorney General

AUGUST 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • wiretap application  
• law enforcement • refusal to confirm or  
deny existence of record • discretion

The appellant requested access to any "wiretap application" records relating to himself.

The institution advised the requester that the existence of any records could neither be confirmed or denied in accordance with section 14(3) of the *Act*.

**ORDER**

The head's decision was upheld.

If a wiretap application record existed, it would contain personal information of the appellant.

The *Criminal Code of Canada* provides a comprehensive secrecy and notification





scheme for wiretap applications. There is an express contradiction between the *Act* and the *Code* where a request for access to such records is made under the *Act* and the record exists. There is an operational conflict between the *Act* and the *Code* where a request for access to such records is made under the *Act* in situations where a record does not exist. As a result, the doctrine of federal legislative paramountcy operates so as to exclude requests for wiretap application records from the scope of the *Act*.

Applying section 14(3) in all cases involving a particular type of record would represent an improper exercise of discretion. Although it may be proper for a decision maker to adopt a policy under which decisions are made, it is not proper to apply this policy inflexibly to all cases. In order to properly exercise discretion under sections 14(3) and 49(a), a head must take into consideration factors personal to the requester, and must ensure that the decision conforms to the policies, objects and provisions of the *Act*.

#### SECTIONS CONSIDERED

2(1), 14(3), 49(a)

#### PREVIOUS ORDERS CONSIDERED

195, P-255, P-262

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### ORDER P-345

APPEALS 900086, 900624,  
P-910469, P-910479 AND  
P-910604

Institution: Ministry of the Environment

AUGUST 27, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

representations re: FOI Appeal • third party information • commercial information • “supplied” • “in confidence”

The appellant submitted four requests for access to information relating to refill-

able soft drink containers, which is submitted to the institution under O. Reg. 623/85 of the *Environmental Protection Act*.

The institution provided the requester with a copy of the summary page contained in two types of monthly reports, but denied access to the remaining responsive records pursuant to sections 17(1)(a), (b) and (c) of the *Act*.

#### ORDER

The institution was ordered to disclose the responsive records.

The *Act* provides that no person is entitled to have access to representations made to the Commissioner by any other person, and prohibits the Commissioner and his staff from disclosing information which comes to their knowledge in the performance of their duties. Therefore, the appellant had no right of access to the representations made in the course of one of his appeals.

The information contained in the records related to the sale of soft drinks, and qualified as commercial information. It was not within the reasonable contemplation of the institution and/or the franchisors, bottlers and distributors that the ratio information would be confidential, and therefore the information was not exempt under section 17.

#### SECTIONS CONSIDERED

17, 52(13), 55(1)

#### PREVIOUS ORDERS CONSIDERED

36, 164, 207

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### ORDER M-19

APPEAL M-910088

Institution: Municipality of the Township of Tiny

JUNE 5, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

solicitor client privilege • for use in giving legal advice • waiver • personal information • presumption of • unjustified invasion of • personal privacy

The appellant requested access to a copy of a legal opinion prepared at the request of the institution, dealing with a conflict of interest which might exist within the institution. The institution denied access to the records pursuant to section 12 of the *Act*.

#### ORDER

The institution was ordered to disclose the record to the appellant.

The record consisted of a confidential written communication between a client and a legal advisor directly related to giving legal advice and therefore was subject to the common law solicitor-client privilege recognized in section 12. However, the institution's release of the record to the individual whose appointment was the subject of the record constituted a waiver of the solicitor-client privilege. Because the institution waived the privilege, it could not rely on the exemption found in section 12 of the *Act*.

Portions of the record contained personal information of the subject of the record but was found not to constitute a presumed unjustified invasion of personal privacy because it did not consist of personal recommendations or evaluations, character references or personnel evaluations [section 14(3)(g)], and though it may have indicated the individual's political associations [section 14(3)(h)] this information was clearly well known. None of the considerations listed in section 14(2) were considered relevant, and the information did not qualify for exemption under section 14.

**SECTIONS CONSIDERED**

2, 12, 14

**PREVIOUS ORDERS CONSIDERED**

M-2

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**ORDER M-20  
APPEAL M-910223**

Institution: The Corporation of the City of Oshawa

JUNE 9, 1992

(COMMISSIONER WRIGHT/ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

law enforcement • confidential source

The appellant requested access to the name and address of the individual who made a complaint to the institution about the condition of the appellant's property. The institution denied access to the records pursuant to sections 8(1)(d) and 14 of the *Act*.

**ORDER**

The head's decision was upheld.

The institution's process of by-law enforcement qualified as "law enforcement" under the *Act*. There was a reasonable expectation of confidentiality within the institution's process of by-law enforcement, and disclosure of the record would disclose the identity of a confidential source of information [section 8(1)(d)].

**SECTIONS CONSIDERED**

8(1)(d)

**PREVIOUS ORDERS CONSIDERED**

M-4

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**ORDER M-21  
APPEAL M-910305**

Institution: City of Kitchener

JUNE 11, 1992

(COMMISSIONER WRIGHT/  
ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

reasonable steps to locate record

The appellant requested access to any letter, field report, drawing or survey which either acknowledged or detailed the removal of a survey stake. The institution informed the appellant that it was not able to grant access as no records existed which responded to his request.

**ORDER**

The search conducted by the institution was reasonable.

Following a review of the memos sent by the Assistant City Clerk to the various departments and affidavits sworn by the employees of the institution outlining the search for responsive records, the institution's search was found to be reasonable.

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**ORDER M-22\*  
APPEAL M-910361**

Institution: Windsor Police Service

JUNE 17, 1992

(COMMISSIONER WRIGHT/  
ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

scope of • request • law enforcement  
• report • personal information  
• presumption of • unjustified invasion of  
• personal privacy

The appellant requested access to all records which refer to her directly or indirectly between February 6, 1987 and July 29, 1991. The institution granted access to three records, and partial access to one record. The institution denied access to the severed information and the remaining records under sections 8(1)(a), 8(1)(c), 8(2)(a), 14, 38(a) and 38(b) of the *Act*.

**ORDER**

The head's decision was partially upheld.

Based on information provided by the appellant, the institution was ordered to conduct a search for additional records which would be responsive to the appellant's original request and issue a decision under the *Act* respecting any records which relate to the incident described by her.

The records contained personal information of the appellant, complainants and witnesses. The personal information was compiled and was identifiable as part of an investigation into a possible violation of law [section 14(3)(b)] the disclosure of which would constitute an unjustified invasion of privacy [section 38(b)].

In view of the length of time the investigation had been inactive and the nature of the information contained in the records, disclosure of the records could not reasonably be expected to interfere with a law enforcement matter [section 8(1)(a)].

The investigative technique or procedure described in the records was not one which is particular to law enforcement, and its disclosure would not hinder or compromise its effective use [section 8(1)(c)].

The records consisted of observations and recordings of fact, and were not "reports" for the purposes of section 8(2)(a).

**SECTIONS CONSIDERED**

2, 8(1)(a), 8(1)(c), 8(2)(a), 14, 38(b)

**PREVIOUS ORDERS CONSIDERED**

170, 188, 200





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## ORDER M-23\*

### APPEAL M-910255

Institution: Town of Gravenhurst

JULY 3, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • contract for personal services • employment information • contract • salaries  
• presumption of • unjustified invasion of  
• personal privacy

The appellant requested access to all resolutions, by-laws, agreements or other documents related to the terms and conditions of employment of a named individual. The named individual had been appointed as both Chief Administrative Officer and Clerk for the institution.

The institution granted access to the resolution and by-law, but denied access to the written agreement entered into between the institution and the named individual pursuant to section 14 of the *Act*.

#### ORDER

The institution was ordered to disclose the record, with the exception of the salary steps.

The date of the agreement, parties, recitals, execution of the agreement, and certain clauses were not recorded information about an identifiable individual.

The record was a contract of employment, not a contract for personal services, therefore section 14(4)(b) of the *Act* had no application. However, because the named individual was an employee of the institution, section 14(4)(a) did apply, and disclosure of the classification, salary range and benefits or employment responsibilities of the named individual would not constitute an unjustified invasion of his

personal privacy.

Although the record itself did not specifically refer to the amount of the salary and salary increases, the specific steps are referable to specific salary amounts contained in a chart provided by the institution. In the circumstances, disclosure of the salary steps would constitute disclosure of the income of the individual and is therefore presumed to constitute an unjustified invasion of personal privacy under section 14(3)(f).

The scheduled and possible additional salary increases and the information included in the remaining clauses did not fall within the types of information listed in section 14(3), and would not constitute an unjustified invasion of the personal privacy of the individual. No combination of factors existed to rebut the presumption found in section 14(3)(f).

#### SECTIONS CONSIDERED

2(1), 14

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## ORDER M-24

### APPEAL M-9200002

Institution: City of Toronto

JULY 7, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

reasonable steps to locate record

The appellant requested access to a Permanent Ward Order relating to the requester and his three siblings. The record was created in 1956 and would have been forwarded to the institution because of its financial obligations relating to the wardship.

The institution stated that it was not in possession of a copy of the record, and therefore access could not be granted.

#### ORDER

The institution's search for the requested record was reasonable in the circumstances.

The institution divested itself of records of this nature in 1967 when welfare ceased to be a city function and was assumed by the Municipality of Metropolitan Toronto. At that time, such records were transferred to the Municipality of Metropolitan Toronto or destroyed. Searches were conducted by both the city and Metro, and the steps taken by the institution to locate the record and the transfer of records were verified by affidavit evidence, and by other evidence in the form of memoranda prepared by persons who conducted the searches. The information provided by the appellant did not lead to the conclusion that a record presently exists within the custody or control of the institution.

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## ORDER M-25

### APPEAL M-910261

Institution: City of Toronto

JULY 8, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information

The appellant requested access to information relating to himself and the management or policies of the Toronto Fire Department.

The institution granted partial access to the requester's personnel file, and partial access to two letters, severing personal information relating to other individuals under section 14 of the *Act*. The appeal relates to the two letters.

#### ORDER

The institution was ordered to disclose the two letters to the appellant.

The two letters were exchanged between two employees of the institution. Each of the two letters was submitted on the letterhead of the institution and was signed by an individual in his capacity as an employee of the institution. The letters related to institution policy, and did not relate personally to the authors. Consequently, the letters did not contain the personal information of the authors.

**SECTIONS CONSIDERED**

2(1)

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**ORDER M-26**

**APPEAL M-910251**

Institution: Regional Municipality of Sudbury

JULY 10, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

name of affected person • personal information • personal privacy

The appellant requested access to names of all temporary and part-time employees, including those who had been hired for summer jobs for the period of January 1990 until May 17, 1991.

The institution denied access to the requested information under section 14 of the *Act*.

**ORDER**

The institution was ordered to disclose the names.

The names constituted personal information, because disclosure of the names would reveal other personal information about the individuals (i.e. the fact that they were hired for temporary or part-time jobs).

Disclosure of the names of individuals who are or were employed by the institu-

tion in a particular classification is not an unjustified invasion of personal privacy.

**SECTIONS CONSIDERED**

2(1), 14

**PREVIOUS ORDERS CONSIDERED**

M-23

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**ORDER M-27**

**APPEAL M-910075**

Institution: Carleton Board of Education

JULY 13, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • economic or other interests

The appellant requested access to records that show standings of the institution's schools in provincial reviews for Grade 11 and 12 physics and chemistry (1987 to 1988) and Grade 9 geography (1986 to 1987); and the results, both school-by-school and board-wide, of all system-wide tests given since 1983 in English, mathematics and science courses for Grades 9 to 12 and Ontario Academic Credits.

The institution granted access to five responsive records, however the records sent to the appellant identified each school not by name, but by an alphabetical code designation. The subject of the appeal was the institution's decision not to identify each school by name.

**ORDER**

The institution was ordered to disclose two records which identified the schools by name.

The school name and its alphabetical code are not the personal information of any identifiable individual, and it was not reasonable to expect that the economic

interests or the competitive position of the institution would be prejudiced by the disclosure of the record.

**SECTIONS CONSIDERED**

2(1), 11(c)

**PREVIOUS ORDERS CONSIDERED**

P-229

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**ORDER M-28\***

**APPEAL M-910116**

Institution: Metropolitan Toronto Police

JULY 14, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

address • name of affected person  
• personal information • presumption of  
• unjustified invasion of • personal privacy

The appellant requested access to names and addresses of two witnesses to an alleged mischief offence. The appellant was the agent for the person accused of the offence.

The institution denied access to the records containing the requested information pursuant to sections 8, 9, 14 and 38 of the *Act*, but revised its claim for exemption after the decision was appealed to only sections 12 and 14.

**ORDER**

The head's decision was upheld.

The names and addresses of the witnesses are properly characterized as the personal information of the witnesses. The personal information was compiled by members of a police force during their investigation of allegations that an offence under the *Criminal Code* had been committed, and met the requirements of a presumed unjustified invasion of personal privacy under section 14(3)(b) of the *Act*. Although the names and addresses were





relevant to a fair determination of the appellant's client's rights, this alone was not sufficient to rebut the presumption contained in section 14(3)(b).

#### SECTIONS CONSIDERED

2(1), 14

#### PREVIOUS ORDERS CONSIDERED

20, P-312

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### ORDER M-29

#### APPEAL M-910070

Institution: Etobicoke Board of Education

JULY 30, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

third party information • trade secret  
• commercial information • copyright

The appellant requested access to a staff report on poverty in Etobicoke, later clarifying that she was seeking access to information purchased by the institution from a research company.

The institution denied access to the records pursuant to section 10 of the *Act*.

#### ORDER

The head's decision was not upheld, and the records were ordered disclosed.

The research company did not provide sufficient information to support the position that the information was the subject of efforts which are reasonable under the circumstances to maintain its secrecy, which is a necessary element of the definition of trade secret.

Providing access under the *Act* does not constitute an infringement of copyright, because of the terms of the *Copyright Act*.

Even if the population and income forecasting formulas or models used to create the record qualified as trade secrets, the

record did not contain these models or formulas themselves, nor would disclosure permit accurate inferences to be drawn regarding the nature of the models or formulas.

Simply because information was purchased by the institution does not make it commercial information for the purposes of section 10.

The information was not technical, scientific or financial information.

#### SECTIONS CONSIDERED

10

#### PREVIOUS ORDERS CONSIDERED

80, 101, 166, 204, P-228, M-10

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### ORDER M-30

#### APPEAL M-910250

Institution: City of Sudbury

AUGUST 12, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

name of affected person • personal information • personal privacy

The appellant requested access to names of all temporary and part-time employees, including those who had been hired for summer jobs for the period of 1990 until May 17, 1991.

The institution denied access to the requested information under section 14 of the *Act*.

#### ORDER

The institution was ordered to disclose the names.

The names constituted personal information, because disclosure of the names would reveal other personal information about the individuals (i.e. the fact that they were hired for temporary or part-time jobs).

Disclosure of the names would not constitute an unjustified invasion of personal privacy, as disclosure of the names of individuals who are or were employed in a particular classification by the institution is not an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 14

#### PREVIOUS ORDERS CONSIDERED

M-23

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### ORDER M-31

#### APPEAL M-920015

Institution: The Corporation of the City of Oshawa

AUGUST 24, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

name of affected person • confidential source • law enforcement

The appellant requested access to the name of the individual(s) who filed a complaint with the institution regarding a property owned by the appellant.

The institution denied access to the name of the complainant(s) under sections 8(1)(b), 8(1)(d), and 14 of the *Act*.

#### ORDER

The institution's decision was upheld.

Order M-4, Order M-16 and Order M-20 all dealt with requests to the same institution for identical information. In those orders, the head's decision to deny access to the name of a complainant was upheld pursuant to section 8(1)(d) of the *Act*. The institution presented the same arguments in their representations. The appellant did not identify any circumstances or raise any argument which would distinguish this appeal from the appeals which resulted in Order M-4, Order

M-16 and Order M-20, and the institution's decision to apply section 8(1)(d) was upheld.

**SECTIONS CONSIDERED**

2(1), 8(1)(d)

**PREVIOUS ORDERS CONSIDERED**

M-4, M-16, M-20

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**ORDER M-32**  
**APPEAL M-910326**

Institution: Midland Public Utilities

Commission

AUGUST 25, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • name of requester  
• unjustified invasion of • personal privacy  
• third party information

The appellant requested access to the name of an individual seeking access to records relating to the appellant.

The institution denied access to the name of the individual under section 14 of the *Act*.

**ORDER**

The institution was ordered to disclose the name to the appellant.

Where a name appears in the context of a request for access to information under the *Act*, disclosure of the name would reveal both (a) the fact that an identifiable individual made a request under the *Act*, and (b) the nature of the request. This renders the name of the requester "personal information".

A person's name does not describe any of the types of information listed in section 14(3)(f) and, without more, would not constitute employment history within the meaning of section 14(3)(d). No presumption of an unjustified invasion of personal privacy existed.

The *Act* does not explicitly or implicitly impose a general rule of non-disclosure of the names of requesters, and there was no indication on the individual's request of a desire that the name be kept confidential.

The individual did not provide sufficient evidence to establish that he or she would be exposed unfairly to pecuniary or other harm, or that his or her name as requester is sensitive information.

Because the individual requested access to personal information of the appellant, the appellant had an interest in knowing the identity of the individual, and disclosure of the name would not be an unjustified invasion of the individual's privacy.

Disclosure of the name of the individual would not reveal any trade secret, technical or commercial information, and the name alone does not qualify for exemption under section 10.

**SECTIONS CONSIDERED**

2(1), 10, 21

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**ORDER M-33**  
**APPEAL M-910453**

Institution: Town of Penetanguishene

AUGUST 28, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

non-recorded information

The appellant requested access to the by-laws which would come in effect where litter from one property blows onto other properties.

The institution indicated that a response to his request would not be given, as such a response would involve the provision of an opinion, not provision of access to a specific record.

**ORDER**

The head's decision was upheld.

The *Act* does not impose a specific duty on an institution to produce information from an individual's memory or knowledge. The institution advised the appellant that the relevant by-laws were available to the public, and representatives met with the appellant to assist him in identifying by-laws which might be relevant. There is no statutory obligation on the institution to respond to the request in any way different from the way it did.

**SECTIONS CONSIDERED**

2(1)

**PREVIOUS ORDERS CONSIDERED**

99, 196

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*\* An application for judicial review has been brought in respect of each of the following orders: P-312, P-341, M-18 (summer Precis) M-22, M-23 and M-28.*



## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED		
	PROVINCIAL	MUNICIPAL
1992 to date*	323	219
1991 to date*	330	244
1991 Total	458	394

NUMBER OF ACTIVE APPEAL FILES CLOSED		
	PROVINCIAL	MUNICIPAL
1992 to date*	335	207
1991 to date*	218	35
1991 Total	437	179

METHOD OF CLOSING ACTIVE APPEAL FILES 1992 TO DATE		
	PROVINCIAL	MUNICIPAL
By order	62	22
Other than by order	273	185

Numbers are subject to change

\* January 1 - June 30

## HIGHLIGHTS OF COMPLIANCE INVESTIGATIONS

These highlights are prepared for the purpose of convenience only. Complete texts of compliance investigations are not currently available to the general public. Please note: investigation numbers are marked "P" to denote provincial investigations and "M" to denote municipal investigations.

### INVESTIGATION I91-24P

Institution: Ministry of Correctional Services

JUNE 17, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • accuracy • consistent  
• disclose • bank

An individual complained that the institution had used his personal information without taking reasonable steps to ensure that it was accurate and up to date. The individual further complained that the institution had improperly used and disclosed his personal information, and that it had wilfully maintained a personal information bank, in contravention of the *Act*.

#### CONCLUSIONS

The IPC concluded that the institution had taken reasonable steps to ensure that the personal information was accurate and up to date. The IPC also concluded that the institution had used and disclosed the personal information in accordance with the *Act*, since it had been used and disclosed for a purpose consistent with the purpose for which it had been obtained or compiled. The IPC further concluded that the personal information did not meet the definition of a personal information bank, in accordance with section 44 of the *Act*. Thus, the individual's concern that the institution

had wilfully maintained a personal information bank in contravention of the *Act*, did not apply in the circumstances of this complaint.

#### SECTIONS CONSIDERED

2(1), 40(2), 41, 42, 44, 61(1)(b)

### INVESTIGATION I91-25P

Institution: Ministry of Correctional Services

JUNE 8, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • accuracy • consistent • bank

An individual complained that the institution had used his personal information without taking reasonable steps to ensure that it was accurate and up to date. The individual further complained that the institution had improperly used his personal information, and that it had wilfully maintained a personal information bank, in contravention of the *Act*. The personal information in question was contained in the institution's reply to the Ombudsman of Ontario, relating to a complaint that the individual had filed with the Ombudsman concerning the institution.

#### CONCLUSIONS

The IPC concluded that the institution had taken reasonable steps to ensure that the personal information was accurate and up to date, and that it had used the personal information in accordance with the *Act*. The IPC further concluded that the personal information was contained in the "Ombudsman/Human Rights Commission" personal information bank, in accordance with the *Act*. Thus, the institution had not wilfully maintained a personal information bank, in contravention of the *Act*.

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

A Board of Education, I92-16M  
A College of Applied Arts and Technology, I91-77P  
Health Disciplines Board, I91-65P, I91-66P, I92-11P  
A Named Hospital, I92-27P  
Lieutenant Governor's Board of Review, I91-59P  
Liquor Control Board of Ontario, I91-84P  
Ministry of Consumer and Commercial Relations, I91-94P  
Ministry of Correctional Services, I91-24P, I91-25P, I91-47P  
Ministry of Government Services, I92-41P  
Ministry of Health, I91-43P, I91-61P, I91-67P, I91-71P, I92-35P,  
Ministry of Labour, I92-47P  
Ministry of Revenue, I91-50P  
Ministry of the Solicitor General, I92-50P  
A Municipal Board of Education, I92-60M  
A Municipal City, I92-36M  
A Municipal County, I91-07M  
A Municipal Corporation I91-66M  
A Municipal Institution, I91-67M  
A Municipal Town, I92-40M  
A Municipal Township, I92-06M  
A Municipal Transit Commission, I92-45M, I92-61M  
Ontario Teachers' Pension Plan Board, I91-52P  
A Police Department, I92-35M  
A Separate School Board, I92-50M  
A Town, I92-22M  
Workers' Compensation Board, I92-08P, I92-25P, I92-26P

#### SECTIONS CONSIDERED

2(1), 40(2), 41, 61(1)(b)

### INVESTIGATION I91-43P

Institution: Ministry of Health

JULY 9, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • accuracy • disclose

An individual complained that the institution had used his personal information without taking reasonable steps to ensure





that it was accurate and up to date, and that it had also improperly disclosed his personal information. The personal information in question was contained in a letter that the institution had sent to the College of Nurses of Ontario, further to a complaint that had been filed against the institution by the individual.

#### CONCLUSIONS

The IPC concluded that the institution had taken reasonable steps to ensure that the personal information was accurate and up to date.

The IPC determined that the College must be able to request and receive information in order to fulfil its statutory obligation to investigate complaints regarding the conduct or actions of its members. Thus, because the letter at issue was relevant to the matter being investigated by the College, the IPC concluded that the institution had disclosed the personal information in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 40(2), 42

#### STATUTES CONSIDERED

Health Disciplines Act

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### INVESTIGATION I91-47P

Institution: Ministry of Correctional Services

JUNE 3, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • notcollect

An individual complained that the notice form he was given, concerning the possibility of personal information being collected relating to a grievance he had filed, failed to meet the requirements of the *Act*. In addition, the complainant questioned the authority cited by the

institution for the collection.

#### CONCLUSIONS

The IPC concluded that the notice form did not meet the requirements of the *Act* because the legal authority cited on the form for the collection of personal information was not appropriate, and the specific title, business address and telephone number of the person who could answer questions about the collection, were not given. The notice form also did not clearly state that personal information would be collected in order to process the grievance.

#### RECOMMENDATIONS

The IPC recommended appropriate revisions to the notice form so that it would comply with the requirements of the *Act*.

The institution agreed to implement the recommendations. The institution also indicated that since the notice form had been based on a sample created and distributed by the Human Resources Secretariat, it would liaise with the Secretariat to ensure that a revised form would be distributed to all ministries.

#### SECTIONS CONSIDERED

2(1), 38(2), 39(2)

#### STATUTES CONSIDERED

*Crown Employees Bargaining Act*

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### INVESTIGATION I91-50P

Institution: Ministry of Revenue

JULY 17, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • express • manner

The Administrator of a retirement residence had requested the IPC to review whether the institution had the authority to indirectly collect the name, age, sex and religion of the residents of a retire-

ment home, for the purpose of completing an "Institutional Enumeration Record".

#### CONCLUSIONS

The IPC concluded that section 15(1) of the *Assessment Act* and section 1 of Ontario Regulation 210/91 authorized the institution to collect each resident's name, age, sex and religion (if Roman Catholic), in accordance with section 38(2) of the *Act*. The IPC further concluded that section 10(2) of the *Assessment Act* provided for "another manner of collection", in accordance with section 39(1)(h) of the *Act*. Thus, the institution was authorized to collect this personal information from someone other than the person to whom it related.

#### SECTIONS CONSIDERED

2(1), 38(2), 39(1)

#### STATUTES CONSIDERED

*Assessment Act*

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### INVESTIGATION I91-52P

Institution: Ontario Teachers' Pension Plan Board

AUGUST 10, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • accuracy • disclose

An individual complained that the institution had disclosed his sister's personal information (regarding her pension plan) to her estranged husband's solicitor. In addition, he complained that the personal information disclosed was inaccurate.

#### CONCLUSION

The IPC determined that the institution had disclosed the sister's personal information to her estranged husband's solicitor, contrary to the provisions of section 42 of the *Act*. However the IPC could

not determine if the personal information contained in the file was accurate at the time in question.

#### RECOMMENDATION

The IPC recommended that the institution ensure that its staff be aware of the type of pension plan administered by the institution. The institution should also ensure compliance with section 42 of the *Act*, when disclosing personal information.

#### SECTIONS CONSIDERED

2(1), 40(2), 42

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### INVESTIGATION I91-59P

Institution: Lieutenant Governor's Board of Review

AUGUST 21, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • clinicalrec

An individual complained that the institution had improperly disclosed his personal information, that was contained in a report, to two attendants who had been present at his hearing at the institution.

#### CONCLUSIONS

The IPC concluded that the report contained information in respect of the history, assessment, diagnosis, observation and care of the patient. Therefore, in accordance with section 65(2)(b), the *Act* did not apply to the record in issue.

#### SECTIONS CONSIDERED

2(1), 65(2)(b)

#### STATUTES CONSIDERED

Ontario Regulation 609 under the *Mental Health Act*

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### INVESTIGATION I91-61P

Institution: Ministry of Health

AUGUST 17, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information by forwarding a letter to a named individual.

#### CONCLUSION

The IPC determined that the letter included the type of information specified in section 65(2)(b) of the *Act*. Specifically, Section 65(2)(b) of the *Act* states:

*65.-(2) This Act does not apply to a record in respect of a patient in a psychiatric facility as defined by section 1 of the Mental Health Act, where the record,*

*(b) contains information in respect of the history, assessment, diagnosis, observation, examination, care or treatment of the patient.*

Therefore, the Commissioner was not able to investigate this matter.

#### SECTIONS CONSIDERED

2(1), 42, 65(2)(b)

#### STATUTES CONSIDERED

*Mental Health Act*

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### INVESTIGATION I91-65P

Institution: Health Disciplines Board

AUGUST 19, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal infor-

mation by forwarding copies of two letters to a named Legal Counsel.

#### CONCLUSION

The IPC determined that the letters at issue contained the complainant's personal information as defined by the *Act*. A complaint against a nurse had been filed by the complainant; these letters referred to this complaint. They had been forwarded to the Legal Counsel, who had represented the nurse at a hearing before the institution's Complaints Review Committee, for his written submissions. Thus, the IPC determined that the institution's disclosure had been reasonably consistent with the purposes for which the personal information had been collected. Accordingly, the IPC was of the view that the institution had disclosed the complainant's personal information in accordance with section 42(c) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(c)

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### INVESTIGATION I91-66P

Institution: Health Disciplines Board

MAY 29, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information when it had copied a letter about the individual to a named institution.

#### CONCLUSION

The IPC determined that the institution had sent a letter containing the complainant's personal information to a named institution, in error. Therefore, it was our view that the institution had disclosed the complainant's personal information contrary to the provisions of



section 42 of the *Act*.

#### RECOMMENDATIONS

The IPC recommended that the institution take all the necessary steps to ensure compliance with section 42 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-67P

Institution: Ministry of Health

JUNE 17, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that a mental health facility operated by the institution had disclosed for public viewing, two records containing his and other patients' personal information.

#### CONCLUSIONS

The IPC concluded that one of the two records had in fact, been improperly disclosed for public viewing, while the other record had not.

As a result of the IPC's investigation, the Administrator of the facility sent a memorandum to the facility's department heads indicating that a patient's personal information should not be posted. The Administrator instructed all department heads to advise their staff of the memorandum, in order to prevent personal information from being posted in the future. The IPC concluded that the institution had satisfactorily addressed the disclosures in question, and had taken steps to prevent similar disclosures from recurring.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I91-71P

Institution: Ministry of Health

AUGUST 5, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information when it copied a letter addressed to him, to three named individuals.

#### CONCLUSION

The three named individuals were employees of the institution and the IPC determined that each individual who had received a copy of the letter had required the information as employees of the institution. In addition the disclosure had been necessary and proper in the discharge of the institution's functions. Therefore, it was the IPC's view that the personal information had been disclosed in compliance with section 42(d) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(d)

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### INVESTIGATION I91-77P

Institution: A College of Applied Arts and Technology

JUNE 25, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • use • disclose

A student at the institution complained that following a confidential conversation with his instructor, the institution collected his personal information in contravention of the *Act*, and without giving notice. In addition, his personal information was disclosed to other faculty members, and an external source.

#### CONCLUSION

The IPC concluded that the collection and use of the personal information was made in accordance with the proper administration of a lawfully authorized activity, i.e. evaluating student performance. Disclosure was made: a) to an officer of the institution who needed the information for the necessary and proper discharge of the institution's functions, b) for a consistent purpose, and c) in compelling circumstances that appeared to affect the health or safety of the complainant.

We found however that adequate notice was not given at the time of the verbal collection.

#### RECOMMENDATIONS

The IPC recommended that:

In future similar situations, faculty should give verbal notice that the personal information may be used for evaluation purposes. If the personal information is subsequently recorded, written notice should be given in accordance with section 39(2) of the *Act*.

The institution should advise all faculty and staff, in writing, of the above recommendation.

#### SECTIONS CONSIDERED

2(1), 38(2), 39(2), 41(b), 42

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### INVESTIGATION I91-84P

Institution: Liquor Control Board of Ontario

AUGUST 13, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • accuracy • collection  
• notice • disclosure

An individual complained that the institution (his employer) had collected and

disclosed his personal information by contacting his second employer. In addition, the institution had not given him notice of this collection.

#### CONCLUSION

The IPC determined that the institution had complied with the disclosure provisions of the *Act*. However the institution had not fully complied with the collection provisions of the *Act* as it had not given notice to the complainant.

Also, the institution had contacted the second employer by sending a facsimile, which contained personal information. One detail of this personal information was inaccurate.

#### RECOMMENDATION

The IPC recommended that the institution comply with the notice provisions of the *Act*. Also, the institution should comply with the "Guidelines on Facsimile Transmissions" and exercise caution when disclosing personal information, ensuring that it is accurate.

#### SECTIONS CONSIDERED

2(1), 38(2), 39, 40(2), 42

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### INVESTIGATION I91-94P

Institution: Ministry of Consumer and Commercial Relations

MAY 21, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information without his consent in a document sent to a resident in the United Kingdom.

#### CONCLUSIONS

The IPC determined that:

(a) the complainant's personal information had been disclosed in a document which had been prepared exclusively for the use of the former Minister of the institution, but which had been sent to a person in the U.K. The institution's position was that it had been "inadvertently enclosed" with a letter from the Minister.

(b) none of the exceptions set out in section 42 of the *Act* applied to the institution's disclosure of the complainant's personal information. Therefore, the disclosure of the complainant's personal information had not been in compliance with section 42 of the *Act*.

#### RECOMMENDATIONS

Notwithstanding the fact that the Minister involved and his staff were no longer with the institution, the IPC recommended that the institution take precautions to ensure that all disclosures of personal information were made in accordance with the provisions of the *Act*.

The institution, in response, assured the IPC that it appreciated the seriousness of the unauthorized disclosure of personal information and that it regretted the breach of the *Act*. The institution also outlined the steps it was taking to ensure that this would not happen again.

#### SECTIONS CONSIDERED

2(1) and 42

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### INVESTIGATION I92-08P

Institution: Workers' Compensation Board

MAY 19, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the Workers' Compensation Board (WCB) should

not have disclosed details of the injury which he had sustained with his previous employer to his present employer.

#### CONCLUSIONS

The IPC determined that the complainant had two injuries: one had been sustained with his previous employer, the other with his present employer. In calculating the complainant's total award, the WCB had applied a specific factor which took into account both disabilities. Therefore, it had been necessary for the WCB to inform the complainant's present employer of the injury he had with his previous employer in order to explain this calculation.

The IPC concluded that the WCB's disclosure (to his present employer) of the complainant's injury sustained with his previous employer had been for a "consistent purpose" and could reasonably have been expected in the circumstances. Therefore, the disclosure had been in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1) and 42

#### STATUTES CONSIDERED

*Workers' Compensation Act*

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### INVESTIGATION I92-11P

Institution: Health Disciplines Board

MAY 22, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information when it had copied a letter addressed to him, to a solicitor.

#### CONCLUSIONS

The solicitor was representing a nurse before the institution's Complaints Re-



view Committee. The IPC determined that the Complaint Review Committee was issuing a decision about the individual's complaint against the nurse. Therefore, it is the IPC's view that it was not unreasonable for the individual to expect that this personal information may have been disclosed to the nurse's solicitor.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I92-25P

Institution: Workers' Compensation Board

JUNE 4, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed her personal information to a law firm without her consent. The institution confirmed to the complainant that they had inadvertently disclosed the information to the law firm and apologized for their error. The institution advised the complainant that steps had been taken to ensure that this situation did not recur.

#### CONCLUSIONS

The complainant asked the IPC to recommend that the institution pay her financial compensation, however, she was advised that the IPC did not have the power to do so. The IPC advised the complainant of its intention to follow up with the institution to ensure that the steps they had taken to rectify the situation, were in fact implemented.

#### SECTIONS CONSIDERED

2(1), 42.

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### INVESTIGATION I92-26P

Institution: Workers' Compensation Board

MAY 20, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the Workers' Compensation Board had access to his hospital medical records.

The IPC had previously investigated a similar complaint. The findings of the previous investigation were conveyed to the complainant as follows:

- since the WCB administers the *Workers' Compensation Act*, the provision of compensation benefits to injured workers is considered to be its lawfully authorized activity.

- the collection of all medical information which the WCB deems relevant in determining claimants' eligibility to compensation benefits, including information contained in hospital medical records, is necessary to the proper administration of this lawfully authorized activity, and is thus in accordance with section 38 (2) of the *Act*.

- in addition, the authority to obtain medical information about a worker from time to time, is given in section 51 of the *Workers' Compensation Act*.

#### SECTIONS CONSIDERED

2(1) and 38(2)

#### STATUTES CONSIDERED

section 51 of the *Workers' Compensation Act*

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### INVESTIGATION I92-27P

INSTITUTION: A NAMED HOSPITAL

MAY 19, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo

An individual complained that a named hospital had disclosed her personal information to her husband's physician without her consent.

#### CONCLUSIONS

The IPC concluded that it was unable to investigate this matter since the named hospital did not fall under any of the categories of institutions covered by either the provincial or municipal Acts.

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### INVESTIGATION I92-35P

Institution: Ministry of Health

MAY 27, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

This complaint was referred to the Compliance department by the Appeals department.

An individual complained that a government security agency had accessed his OHIP records and had used this information to thwart his employment prospects. In addition, he was concerned that the institution had not maintained a list of OHIP employees who had access to his records.

The IPC reassured the complainant that the only persons who had access to his OHIP records were OHIP employees who required access in the performance of their duties. Further, the complainant was advised that the *Act* did not require

the institution to maintain a list of the OHIP staff who had access to his records.

**SECTIONS CONSIDERED**  
2(1) and 42

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## INVESTIGATION I92-41P

Institution: Ministry of Government Services

JUNE 19, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

**KEYWORDS**

personinfo • disclose

An individual complained that the institution had disclosed his personal information to the Ombudsman of Ontario.

The IPC advised the complainant that under the *Ombudsman Act*, the Ombudsman of Ontario has the power to require the disclosure of personal information in the custody or under the control of provincial governmental institutions. Therefore, the disclosure of the complainant's personal information by the institution had been in accordance with section 42(e) of the *Act*, which permits disclosure of personal information for the purpose of complying with an act of the Legislature.

**SECTIONS CONSIDERED**  
2(1), 42(e)

**STATUTES CONSIDERED**  
*Ombudsman Act*

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## INVESTIGATION I92-47P

Institution: Ministry of Labour

AUGUST 7, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

**KEYWORDS**

personinfo • disclosure

An individual complained that the institution had disclosed his personal infor-

mation when it carbon-copied a letter addressed to himself, to a third party.

**CONCLUSION**

When the individual submitted an access request to the institution, he had carbon-copied his request to a third party. As a result, the institution also carbon-copied the third party in its reply. Therefore, it is the IPC's view that it was reasonable for the individual to expect that such a disclosure would have been made.

**SECTIONS CONSIDERED**  
2(1), 42(c)

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## INVESTIGATION I92-50P

Institution: Ministry of Solicitor General

AUGUST 26, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

**KEYWORDS**

personinfo • collect • disclosure

An individual complained that his son's personal information had been improperly collected and disclosed in connection with the serving of an order by a member of the Ontario Provincial Police.

**CONCLUSION(S)**

The IPC determined that the collection and disclosure of the son's personal information was for the purpose of law enforcement and was, therefore, permitted under the provisions of the *Act*.

**SECTIONS CONSIDERED**  
2(1), 39(1)(g), 42(g)

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## INVESTIGATION I91-07M

Institution: A Municipal County

JUNE 25, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

**KEYWORDS**

personinfo • disclose • consistent

An individual complained that the institution had disclosed her personal information from her application for social assistance, on four separate occasions. Three of these occasions involved disclosures to two different employees of a federal institution and the fourth involved a disclosure to an officer of an embassy who had sponsored the complainant to come to Canada. The disclosures were said to have been verbal and the complainant did not specify exactly what personal information was disclosed.

**CONCLUSIONS**

The IPC determined that only one of the occasions cited by the complainant involved the disclosure of personal information. This involved the institution disclosing a letter, containing four pieces of the complainant's personal information, to an employee of a federal institution.

The IPC concluded that the institution had disclosed the complainant's personal information, which included her name, address, and two file numbers, when it sent a letter confirming a verbal exchange to an employee of a federal institution. The institution did not comply with section 32 of the *Act* when it disclosed the complainant's address and one file number. However, the institution was in compliance when it disclosed the complainant's name and other file number since this personal information was disclosed for a purpose consistent with the purpose for which the information had been obtained, namely, to determine the complainant's eligibility for social assistance.

**SECTIONS CONSIDERED**  
2(1), 32, 33



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## INVESTIGATION I91-66M

Institution: A Municipal Corporation

JULY 14, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • dispose

An individual complained that the institution had destroyed his personal information without his consent, by erasing audio and video tapes that it had made of his interview for a position within the institution.

The IPC determined that the complainant's personal information had not been recorded by the institution, due to the improper operation of the video camera and incomplete instructions to the complainant, to activate the audio recorder.

### CONCLUSIONS

The IPC concluded that the institution's audio and video recordings of a job interview with the complainant would have fallen under the definition of "personal information" set out in the *Act*, if the information had, in fact, been recorded. However, since the information was not recorded, the institution could not have destroyed it. Therefore, the *Act* had not been contravened.

### RECOMMENDATIONS

The IPC recommended that the institution take steps to increase staff awareness of the institution's obligations under the *Act* regarding the collection, retention, and disposal of personal information and to ensure that in the future, if a recording medium failed to record, that the individual be notified immediately.

### SECTIONS CONSIDERED

2(1), 30 (1)

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## INVESTIGATION I91-67M

Institution: A Municipal Institution

JULY 20, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

Personinfo • collect

The complainant stated that certain information concerning his medical history was collected via a "Work Limitation" form requested by the institution (his employer) prior to the complainant's return to work. The form asked employees returning from sick leave to answer a number of questions. The complainant felt that the institution did not have a right to request certain information relating to the nature of the injury.

### CONCLUSIONS

After reviewing the form, the IPC found that the information in question was not required by the institution. The information provided on the remaining parts of the form was sufficient to enable the institution to safely re-integrate employees returning from sick leave. As a result, the IPC concluded that the collection of the personal information in question contravened section 28 of the *Act*.

### RECOMMENDATIONS

The IPC recommended that the institution no longer request the information in question. The institution readily agreed to do so.

In addition, the IPC recommended that the institution sever all the information in question, collected from the complainant via the Work Limitation form.

### SECTIONS CONSIDERED

2(1), 28.

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## INVESTIGATION I92-06M

Institution: A Municipal Township

MAY 28, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • use • disclose • request

An individual complained that the institution had improperly used and disclosed his personal information, when his access request had been disclosed to its Legal Services Department.

### CONCLUSIONS

The IPC concluded that the information in question was "corporate information" and not "personal information", as defined in section 2(1) of the *Act*. Thus, Part II of the *Act* which deals with collection, retention, use and disclosure of personal information, did not apply. On that basis, the IPC concluded that the institution did not use or disclose personal information, contrary to Part II of the *Act*.

### SECTIONS CONSIDERED

2(1), 32

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## INVESTIGATION I92-16M

Institution: A Board of Education

JULY, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

Personinfo • disclose

The complainant stated that she had revealed sensitive personal information to a faculty member at her school, in confidence. This faculty member then disclosed the information to both the complainant's mother and father, without her consent.

#### CONCLUSION

The IPC reviewed the school board's records and determined that the information in question was not recorded. The IPC therefore concluded that the information in question was not "personal information" as defined by section 2(1) of the *Act*.

#### RECOMMENDATIONS

None

#### SECTIONS CONSIDERED

2(1), 32

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### INVESTIGATION I92-22M

Institution: A Town

AUGUST 24, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORD

personinfo • index • bank

An individual complained that the institution had lacked both (a) a list of the general classes or types of records in its custody or control, pursuant to section 25(1) of the *Act*, and (b) an index of all personal information banks in its custody or control, pursuant to section 34(1) of the *Act*.

#### CONCLUSION

The IPC concluded that the institution did not have the aforementioned information available for inspection by the public at the time of the complainant's request for the information. The institution was informed of its requirements under the *Act*. In response, the institution produced a Directory of General Records and Personal Information Banks for the institution, which met the requirements of the *Act*.

#### SECTIONS CONSIDERED

25(1), 34(1)

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### INVESTIGATION I92-35M

Institution: A Police Department

JUNE 1, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed her personal information, when information concerning charges brought against her (which were subsequently withdrawn) was published in a local newspaper.

#### CONCLUSIONS

The IPC determined that the disclosure of the information did not contravene the *Act* since the information was contained in court records, and thus formed part of a record that was available to the general public.

#### SECTIONS CONSIDERED

2(1), 27

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### INVESTIGATION I92-36M

Institution: A Municipal City

AUGUST 21, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • privacy

The IPC received a complaint that the institution was not taking due care to ensure employee privacy in its distribution of pay cheques and pay statements.

#### CONCLUSION

The institution advised that it was considering the whole issue of pay cheque and pay statement distribution. However, the institution agreed to the IPC's recommendation to implement interim measures which would safeguard the privacy of its employees such as distributing

pay cheques in individual envelopes and folding pay statements in a manner which concealed personal financial information.

#### RECOMMENDATIONS

(see above)

#### SECTIONS CONSIDERED

2(1)

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### INVESTIGATION I92-40M

Institution: A Municipal Town

JUNE 17, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that the institution had disclosed his personal information to a local newspaper without his consent.

#### CONCLUSIONS

The IPC concluded that the information disclosed to the newspaper was a court record of criminal charges and prosecutions, which was available to the general public. Therefore, the IPC determined that the disclosure of the information did not contravene the *Act* since the information formed part of a record that was available to the general public.

#### SECTIONS CONSIDERED

2, 42

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### INVESTIGATION I92-45M

Institution: A Municipal Transit Commission

JULY 31, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose



An individual complained that the institution had disclosed his personal information (his name and driving record) in a publication available to the public. However, the IPC found that the complainant's name was not included in the publication.

#### CONCLUSION

Since the complainant's name was not included in the publication, the information in question was not "personal information" as defined by the *Act*. The IPC therefore concluded that the institution had not violated any of the privacy provisions of the *Act* in this case.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-50M

Institution: A Separate School Board

AUGUST 12, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • available • databank

An individual complained that the institution had collected and used her husband's personal information, contrary to the provisions of the *Act*. The individual's concerns arose when the institution had sent her husband, a non-Catholic, a letter requesting him to redirect his taxes from the public to the separate school system.

#### CONCLUSION

The IPC determined that the information in question was contained in a public record entitled, "Property Assessment Public Information". Section 27 of the *Act* states that Part II of the *Act*, which deals with the collection, retention, use and disclosure of personal information, does not apply to personal information

that is maintained for the purpose of creating a record available to the general public. Thus, the IPC concluded that the institution had not collected nor used the personal information in question contrary to Part II of the *Act*.

#### SECTIONS CONSIDERED

2(1), 27

### INVESTIGATION I92-61M

Institution: A Municipal transit commission

AUGUST 26, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that his employer, the institution, had disclosed his personal information (the fact that he was on sick leave) to a bank, where he had applied for a loan.

#### CONCLUSION

The IPC determined that the institution had disclosed the complainant's personal information (his sick leave) to the bank. The IPC concluded that this disclosure was not in compliance with the provisions of section 32 of the *Act*.

#### RECOMMENDATIONS

The IPC recommended that the institution implement stricter procedures to ensure compliance with section 32 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-60M

Institution: A Municipal Board of Education

AUGUST 28, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

An individual complained that his personal information had been improperly disclosed by the institution when it copied its reply to his request for access to records to five other individuals.

#### CONCLUSION

The institution acknowledged that it should not have sent a copy of its reply to the complainant to the individuals in question. The institution agreed to take steps to ensure that a similar situation would not occur again in the future.

#### SECTIONS CONSIDERED

2(1), 32

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# PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

WINTER  
1993



## HIGHLIGHTS OF ORDERS

These highlights are prepared for the purposes of convenience only. For accurate reference, refer to the official orders of the Information and Privacy Commissioner, available from Publications Ontario at 1-800-668-9938. Please note: Orders are marked Order No. "P" to denote provincial orders and Order No. "M" to denote municipal orders.

### ORDER P-346 APPEALS 900284 AND P-910040

Institution: Stadium Corporation of Ontario Limited

AUGUST 27, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • financial information • commercial information • "supplied" • "in confidence" • reasonable expectation of • harm • undue loss or gain • economic interests • economic or other interests of Ontario • burden of proof

The appellant requested access to records on work/projects remaining before a partnership agreement is entered into between the consortium and SkyDome, any records on this type of agreement, including economic and legal implications of delaying having such an agreement after the stadium opening date. The appellant also requested access to records on developing a partnership

## AT A GLANCE

### ORDERS

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agreement between SkyDome and consortium members.

The institution denied access to the responsive records under sections 13(1), 17(1)(a), (b) and (c), and 18(1)(a), (c), (d), (e), (f) and (g) of the *Act*.

#### ORDER

The institution was ordered to disclose the records.

None of the records contained information which could properly be characterized as a suggested course of action which

would ultimately be accepted or rejected by its recipient during the deliberative process and therefore did not qualify for exemption under section 13(1) of the *Act*.

Records contained in a publicly available court file did not qualify for exemption under section 17(1) as the institution and/or the affected persons failed to establish that the prospect of disclosure of these already publicly available records would give rise to a reasonable expectation that one of the types of harms specified in (a), (b) or (c) of section 17(1) will occur.

One record would permit the drawing of accurate inferences with respect to commercial and/or financial information actually supplied to the institution by the affected persons implicitly in confidence. The institution's generalized references to harm to the affected persons was not sufficiently detailed and convincing to support a reasonable expectation of one of the types of harms specified in sections 17(1)(a), (b) and (c) and, therefore, the record did not qualify for exemption under section 17(1).

The information itself had no intrinsic monetary value, and the institution did not express an intention of publishing or disseminating this information in a way that would result in some form of monetary payment to the institution. Therefore section 18(1)(a) did not apply. The institution failed to provide detailed and convincing evidence that disclosure of the information contained in the record could reasonably be expected to result in the types of harms specified in sections 18(1)(c), (d) and (g), and these sections did not apply.

A statement that the records disclose the positions and criteria of terms applicable to present arrangements that are to be

applied to continuing negotiations for complete terms is not sufficient to establish the requirements of section 18(1)(e).

Because some form of agreement must have been reached in order to put the SkyDome complex into operation, the institution's statement that the draft agreement is a "plan" that had not yet been put into operation was not accepted, and section 18(1)(f) did not apply.

#### SECTIONS CONSIDERED

13(1), 17(1), 18(1)

#### PREVIOUS ORDERS CONSIDERED

36, 87, 118, 141

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### ORDER P-347

#### APPEAL P-910276

Institution: Ministry of Consumer and Commercial Relations

AUGUST 28, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • presumption of  
• unjustified invasion of • personal privacy  
• public scrutiny • public interest override

The appellant requested access to the educational history of five individuals, four of whom were either currently or formerly employed within the Fuels Safety Branch of the institution. The institution provided access to the job specifications for certain relevant positions, and denied access to the educational history of four of the individuals pursuant to section 21 of the *Act*. The fifth individual was not employed by the institution.

#### ORDER

The institution's decision was upheld.

All parties agreed that the record consisted of personal information, and that

the disclosure of the information would result in a presumed unjustified invasion of personal privacy under section 21(3)(d) of the *Act*.

The records did not contain any of the types of information described in section 21(4), and this section did not operate to rebut the presumption under section 21(3)(d). No public demand for the scrutiny of the government or its agencies had been established in this appeal, and section 21(2)(a) was not a relevant consideration. The appellant's assertion that disclosure of the affected persons' educational history may promote public health and safety was too remote to establish the requirements of section 21(2)(b), and this section was not a relevant consideration. Therefore, the presumed unjustified invasion of privacy was not rebutted, and the records were properly exempt.

Section 23 did not apply to override section 21, as there was no compelling public interest in the disclosure of the records.

#### SECTIONS CONSIDERED

21, 23

#### PREVIOUS ORDERS CONSIDERED

12, 20

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### ORDER P-348

#### APPEAL 900590

Institution: Humber College of Applied Arts and Technology

AUGUST 31, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

advice to government • economic or other interests of Ontario • evaluation  
• personal information • presumption of  
• unjustified invasion of • personal privacy  
• public scrutiny • third party information  
• "supplied" • health and safety information



The appellant requested access to a report prepared for the president of the institution by a consultant commissioned to review matters pertaining to the School of Social and Community Services at the institution's Lakeshore campus. The institution denied access to the entire record citing sections 17(1)(a), 18(1)(f) and (g), 21 and 49(b) of the *Act*. During the course of the appeal, the institution withdrew its section 49(b) exemption claim, and added section 13(1) as a new exemption.

#### ORDER

The head's decision was partially upheld.

The information contained in the record was supplied by the institution's faculty, staff, administrators and students. The institution's faculty and staff are part of the institution and do not qualify as third parties for the purposes of section 17. The interests of the students are more appropriately addressed under section 21. Therefore, the information was not "supplied" to the institution for the purposes of section 17, and this section did not apply.

The record contained certain recommendations which, if adopted and implemented, might involve the formulation of a detailed plan, but the record itself was not a plan or a proposed plan, and section 18(1)(f) and (g) did not apply.

Portions of the record consisted of a suggested course of action, and qualified as advice under section 13(1). However, the recommendations were corrective in nature, and were aimed at enabling the institution to deal efficiently with existing and future issues and concerns, and assisting the president to improve administrative operations. The record fell within the section 13(2)(f) exception, thereby precluding the institution from

denying access to the record under section 13(1) of the *Act*.

Even with the names severed, some of the remaining information consisted of personal views and opinions of certain individuals who would be identifiable by virtue of the nature of the information provided, and this information qualified as personal information. Other parts of the record consisted of personal opinions or views of or about other identifiable individuals, and qualified as personal information. None of the information contained in the record was the personal information of the appellant, and portions of the record did not contain personal information.

The personal information consisted of a review and recommendations about the job performance of identifiable individuals, and met the requirements for a presumed unjustified invasion of privacy under section 21(3)(g). The concerns raised by the appellant about public scrutiny, public health and safety, and informed consumer choice were adequately addressed by the disclosure of the parts of the record which did not contain personal information, and were not sufficient to rebut the section 21(3)(g) presumption.

#### SECTIONS CONSIDERED

2(1), 13, 17(1)(a), 18(1)(f), 18(1)(g), 21

#### PREVIOUS ORDERS CONSIDERED

20, 36

#### ORDER P-349

##### APPEAL P-9200154

Institution: Ministry of Correctional Services

SEPTEMBER 1, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The appellant requested access to his file covering a period served in a correctional facility.

The institution disclosed the appellant's main institution file in its entirety. The appellant claimed that the materials provided to him were not complete.

#### ORDER

The institution's search was reasonable.

During the course of the appeal, the institution conducted two further searches, and located nine additional records. These records were disclosed to the appellant. During the inquiry, the institution conducted a final search for responsive records. Seven individuals participated in the final search, each swore an affidavit verifying that no additional records were found, and the institution indicated that all areas of the correctional facility where responsive records were likely to be located had been searched. The appellant did not provide any credible evidence to support the existence of any additional responsive records.

#### ORDER P-350

##### APPEAL P-910096

Institution: Ministry of Consumer and Commercial Relations

SEPTEMBER 3, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record • record does not exist • record • management

The appellant requested access to records relating to the appellant's activities as a registered broker under the *Real Estate and Business Brokers Act (REBBA)*.

The institution provided access to several records, but the appellant maintained that additional responsive records existed but had not been located.

#### ORDER

The institution's search was reasonable.

The institution described the steps taken to locate the responsive records, and provided an affidavit sworn to by the institution's Freedom of Information and Privacy Co-ordinator which outlined the various searches conducted. Several thorough searches were conducted during the course of processing the appellant's request and appeal, and the searches were reasonable in the circumstances.

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### ORDER P-351 APPEAL P-910324

Institution: George Brown College

SEPTEMBER 16, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

colleges • economic or other interests of Ontario • reasonable steps to locate record • record does not exist

The appellant requested access to all assignments, quizzes, exams and the grading evaluations for two courses he took as a student of the college.

The college disclosed several records to the requester, and denied access to six records pursuant to section 18(1)(h) of the *Act*. The appellant maintained that additional responsive records existed.

#### ORDER

The college was ordered to disclose the records, and the search for responsive records was reasonable.

The records consisted of questions used in examinations which have already been completed, and contained the answers provided by the appellant and his scoring on individual questions. The fact that the college may, at some point in the future, choose to re-use the same

questions on a subsequent examination is not sufficient to satisfy the requirements of section 18(1)(h).

The college outlined its record retention practices, and provided an affidavit outlining the searches conducted. The appellant did not provide any evidence or explanation in support of his position that the additional records should exist. The college's search was reasonable in the circumstances.

#### SECTIONS CONSIDERED

18(1)(h)

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### ORDER P-352\* APPEAL P-9200372 AND P-9200392

Institution: Archives of Ontario

SEPTEMBER 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

Archives of Ontario • personal information • medical, psychiatric or patient records • presumption of • unjustified invasion of • personal privacy • law enforcement • investigation • report • public scrutiny • public interest override

The appellants requested access to a 1976 report prepared by the Inspection and Standards Branch of the Ministry of Correctional Services, concerning alleged inappropriate staff conduct at the Grandview Training School for Girls.

The Archives denied access to the entire record pursuant to section 14(2)(a) of the *Act*, and exempted significant portions of the record under sections 14(1)(a), (b), (c), (d) and (f), 14(2)(d) and 21 of the *Act*. During the course of the appeal, the Archives withdrew its exemption claim under section 14(1)(c) and added section 14(2)(b) in the context of the possible application of the *Young Offenders Act* (YOA).

#### ORDER

The Archives' decision was partially upheld.

The investigation which led to the creation of the record was not conducted for the purpose of investigating an offence alleged to have been committed by a young person; for use in proceedings against a young person; or for any other type of activity outlined in sections 40, 42 or 43 of the YOA. Section 45.2 of the YOA was not applicable to the record, and section 14(2)(b) was not a valid exemption claim in the circumstances of this appeal.

The investigation was an internal investigation into the operation of a training school. Upon completion of the investigation, the Ministry was not in a position to enforce or regulate compliance with the *Training Schools Act* or any other law. The Ministry had investigatory responsibility for ensuring the proper administration of training schools, but it was the police force and Crown Attorney's office which had regulatory responsibilities of law enforcement as envisioned by section 14(2)(a) of the *Act*, therefore this section was not applicable in the circumstances of this appeal.

Parts of the record contained information that qualified as personal information of the subject of the investigation and other identifiable individuals.

Some of the personal information related to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation and met the requirements for a presumed unjustified invasion of privacy under section 21(3)(a). An investigation into the operation of a training school did not fall within the meaning of the word "law" as it is used in section 21(3)(b), and this section did not apply.



The record did not contain any information that pertained to section 21(4), and this section did not operate to rebut the presumed unjustified invasion of privacy under section 21(3)(a).

Public scrutiny of the activities of the Government of Ontario was found to be a relevant consideration in the circumstances of this appeal, but this alone was not sufficient to rebut the section 21(3)(a) presumption, and this personal information was properly exempt.

The remaining parts of the record explicitly documented emotional and physical behaviour of employees and wards, and included allegations of mistreatment and abuse. Sections 21(2)(f) and (i) were found to be relevant considerations in the circumstances of the appeal. Disclosure of these parts of the record would constitute an unjustified invasion of personal privacy.

While there was an element of public interest in disclosure of the record, it was not sufficiently compelling to clearly outweigh the purpose of section 21 of the *Act*, that being the protection of personal privacy of individuals named in the record.

The Archives did not provide sufficient evidence to establish a reasonable expectation of the harms identified in sections 14(1)(a), (b), (d), or (f), and the record did not qualify for exemption under these sections.

The term of correctional supervision which was in effect for each individual who was a ward at Grandview at the time the record was created had expired, and section 14(2)(d) did not apply.

#### SECTIONS CONSIDERED

2, 14(1)(a),(b),(d),(f), 14(2)(a),(b),(d), 21

**PREVIOUS ORDERS CONSIDERED**  
20, 24, 98, 163, 183, 188, 200

### ORDER P-353 APPEAL P-911156

Institution: Ministry of Health  
SEPTEMBER 23, 1992  
(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

confidentiality provision in other *Act*  
• personal information • third party information • financial • commercial  
• "supplied" • "in confidence" • reasonable expectation of • harm • severance

The appellant requested access to an invoice pertaining to a three court actions. The Ministry denied access to the records pursuant to clause 6 of section 67(2) of the *Act*.

During the course of the appeal, the appellant indicated that he was not seeking any information which identified the person to whom the legal fees apply or which could lead to the disclosure of that person's identity. The person to whom the legal fees applied and his legal counsel claimed that sections 17 and 21 applied to the record.

#### ORDER

The Ministry was ordered to disclose portions of the record.

While certain documents relating to the court actions were ordered by the court to be treated as confidential, sealed and not form part of the public record under section 137(2) of the *Courts of Justice Act*, the record at issue in this appeal was not one of them. However, the record did contain certain information that would reveal information that is subject to the court order, specifically the name of the person to whom the legal fees applied and personal information which could

lead to the disclosure of the true name of this person. The appellant was not interested in receiving this information, therefore it fell outside of the scope of this appeal, and could be severed from the record. The unsevered parts of the record did not contain any information which fell within the confidentiality provision in section 137(2) of the *Courts of Justice Act*, and was subject to the *Act*.

The record, as severed, no longer contained information which qualified as personal information, and it was therefore not necessary to consider the applicability of section 21 of the *Act*.

The information contained financial and/or commercial information, but sufficient evidence to establish that the specific record at issue in this appeal was supplied to the Ministry in confidence, either implicitly or explicitly, was not provided. The evidence provided in support of a reasonable expectation of any of the types of harm specified in section 17(1)(a), (b) or (c) was too generalized and speculative in nature, and the record did not qualify for exemption under section 17(1)(a), (b) or (c).

#### SECTIONS CONSIDERED

2(1), 17(1), 67(2)

#### PREVIOUS ORDERS CONSIDERED

36

### ORDER P-354 APPEAL P-9200236

Institution: Ministry of the Attorney General  
OCTOBER 5, 1992  
(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The appellant requested access to documents pertaining to the Office of the Attorney General assisting in the funding or not funding of an individual who was involved in litigation with a certain organization in or around 1978. At first the Ministry failed to respond to the appellant's request. After an appeal was launched a representative of the Ministry advised the Appeals Officer that a search had failed to yield any records.

#### ORDER

The institution's search was reasonable.

The Ministry submitted two affidavits sworn by two Ministry representatives who conducted the search. The affidavits described the search, which included computer and manual searches and conversations with various Ministry employees who would be familiar with the matter.

### ORDER P-355 APPEAL P-9200365

Institution: Ministry of the Solicitor General  
OCTOBER 7, 1992  
(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • age • medical information • employment information • address • presumption of • unjustified invasion of • personal privacy • reasonable steps to locate record • record does not exist

The Ministry received a request for access to information pertaining to two witnesses who appeared in a criminal trial. The requester was seeking access to the proper name, age and occupation of one witness and one sentence from the signed statement of the second witness. The requester also sought access to a letter and envelope referred to in a previously disclosed record as having to be filed as an

exhibit at the trial. The Ministry denied access to the information pertaining to the witnesses pursuant to sections 14(2)(a) and 21 of the *Act*. With respect to the exhibit, the Ministry was unable to locate any such record. The requester appealed the Ministry's decision.

#### ORDER

The Ministry's search for the exhibit was reasonable in the circumstances. The decision of the Ministry with regard to access was upheld.

The information regarding the witnesses contained the age and medical condition of one witness and the age, address, place of employment and occupation of a second witness. This information qualifies as personal information of the individual to whom it relates.

The records were compiled and are identifiable as an investigation into a possible violation of law. Accordingly, the requirements for presumed unjustified invasion of personal privacy under section 21(3)(b) have been established. The records at issue in this appeal do not contain any information relevant to section 21(4).

Section 21(2)(d) is not a relevant factor. Accordingly, the presumption raised by section 21(3)(b) of the *Act* has not been rebutted and the disclosure of the personal information of the two witnesses would constitute an unjustified invasion of their personal privacy. The record is exempt under section 21 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 21

#### PREVIOUS ORDERS CONSIDERED

P-312

### ORDER P-356 APPEAL P-910167

Institution: Ministry of Health

OCTOBER 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

advice to government • third party information • commercial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • undue loss or gain • similar information • no longer supplied

The Ministry received a request for records relating to a proposal by the Scarborough General Hospital to construct an office building. The Ministry denied access to some of the responsive records pursuant to sections 13(1), 17(1) and 19 of the *Act*. The requester appealed the Ministry's decision. During mediation, the Ministry withdrew the section 19 exemption claim entirely and the section 17 claim as it applied to certain records.

#### ORDER

The Ministry's decision was partially upheld.

Parts of Record 1 qualify for exemption under section 13(1) of the *Act* because disclosure would reveal the advice and recommendations of a consultant retained by the Ministry. Factual material contained in these parts of the record is so interwoven with the advice and recommendations that it can not reasonably be severed pursuant to section 10(2) of the *Act*.

Record two, a lease, contains details of a transaction involving the lease of land. The information qualifies as commercial information, thereby satisfying the first part of the section 17 test. This record was also supplied to the institution in confidence. Because the representations contain only generalized references to



possible harms, they are speculative and lack sufficient supporting evidence to satisfy the requirements of the third part of the test. Therefore, the lease does not qualify for exemption under section 17(1) of the *Act*.

Record 3, an excerpt from the Hospital Operating Policy Manual does not qualify for exemption under section 17.

Records 4 and 5, property value appraisals, contain commercial information, supplied to the institution implicitly in confidence. Therefore, this record satisfies parts one and two of the section 17 test. It is not reasonable to assume that parties seeking the Minister's approval would no longer continue to submit appraisals, if required to do so in order to obtain the necessary Ministry approvals. The representations with regard to possible harm are speculative and not sufficient to establish an exemption claim under section 17(1). Therefore, the property value appraisal does not qualify for exemption under 17(1).

#### SECTIONS CONSIDERED

13(1), 17(1)

#### PREVIOUS ORDERS CONSIDERED

161, P-248, P-348, 36, 47, 48, 68, P-323

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### ORDER P-357 APPEAL P-920151

Institution: Ministry of Correctional Services

OCTOBER 9, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • right to fair trial  
• presumption of • unjustified invasion of  
• personal privacy

The Ministry received a request for access to copies of all correspondence in the custody and control of the Ministry,

relating to any allegation of wrongdoing, discipline, character and behaviour of the requester. Access was denied to part of the responsive record pursuant to sections 49(a), 49(b), 14(1)(f) and 20 of the *Act*. The record at issue appeared to contain the personal information of nine individuals other than the appellant.

#### ORDER

The Ministry's order was partially upheld.

All but page one of the records at issue contained the personal information of both the appellant and one or more of the other individuals.

Any remedy available to the appellant through the grievance process lies against the Ministry, not the appellant's supervisor. Even if it were assumed that the appellant's supervisor's rights are determined in some way in the context of the appellant's grievance, neither the Ministry nor the appellant's supervisor has demonstrated how "unequal disclosure" outside the grievance proceeding could reasonably be expected to deprive the appellant's supervisor of impartial adjudication. Neither the appellant's supervisor nor the Ministry has provided any evidence to show that a trial or a adjudication involving the rights of the appellant's supervisor outside the context of the appellants grievance has commenced or is anticipated. Therefore, section 14(1)(f) does not apply in relation to any rights of the appellant's supervisor. In order to establish unfairness the Ministry must do more than simply identify that a grievance has commenced.

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requesters right of access to his own personal information against other individuals right to the protection of their privacy. The

severed portions of the pages for which the Ministry has claimed section 21(3)(d) do not contain any information which could accurately be characterized as the employment history of individuals other than the appellant. None of the considerations contained in section 21(2) or (3) are relevant to some portions of the record in the circumstances of this appeal. Disclosure of other portions of the record would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and, therefore, qualify for exemption under section 49(b) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 14(1)(f), 21(3)(d), 21(2)(e), (f), (h), (i), 49(b)

#### PREVIOUS ORDERS CONSIDERED

48, 192

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### ORDER P-358 APPEAL P-910269

Institution: Ministry of Natural Resources

OCTOBER 14, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • address  
• confidential correspondence • financial transactions • presumption of • unjustified invasion of • personal privacy

The Ministry received a request for access to copies of comments received by the Ministry from a named individual with respect to a proposed land exchange. The Ministry denied access to the information pursuant to section 21 of the *Act*.

#### ORDER

The Ministry's decision was partially upheld.

The records at issue contain recorded information about a specific property in a proposed land exchange, not recorded

information about any identifiable individual. The views and opinions expressed by an individual other than the requester in the records were sent to the Ministry in opposition to a proposed land exchange between the requester and the Crown. They are not of a private, confidential or personal nature. Information relating to the financial transactions of a person other than the requester as well as the home address of that person, qualify as personal information of that individual.

The personal information contained in the record is not any of the types of information listed in section 21(3). Section 21(2)(d) is not a relevant consideration. None of the considerations which weigh in favour of disclosure apply. Sections 21(2)(e) and (g) if they are found to be relevant considerations would by their wording, weigh in favour of not disclosing the record. Therefore, disclosure of the home address and information relating to financial transactions in which the other individual has been involved would constitute an unjustified invasion of that person's personal privacy.

#### SECTIONS CONSIDERED

2(1), 21

#### PREVIOUS ORDERS CONSIDERED

P-312

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### ORDER P-359\*

#### APPEAL P-910676

Institution: Ministry of Agriculture and Food

OCTOBER 30, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • commercial information • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • similar information • no longer supplied

The Ministry received a request for access to copies of daily live chicken slaughter reports at a named company for the period January 1, 1991 to June 24, 1991. The Ministry denied access pursuant to section 17(1)(a) and (b) of the *Act*.

#### ORDER

The decision of the Ministry was not upheld.

In order to qualify for exemption under section 17(1)(a) or (c) of the *Act* the Ministry and/or the affected person must establish the requirements of all three parts of the section 17 test.

The information at issue is commercial information and was supplied in confidence to the Ministry. In the absence of representations from the affected person, the submissions made by the Ministry are speculative as they relate to the harm where the affected person might suffer if the record is disclosed. Therefore, the record does not qualify for exemption under section 17(1)(a).

Section 47(2)(d) of Regulation 607 under the *Meat Inspection Act* clearly requires that records of the number of animals and the dates of slaughter be kept for inspection. Section 47(3) of the regulation imposes an obligation on every plant operator to produce these records for inspection when required to do so by the Ministry. The Ministry failed to establish that disclosure of the information contained in the record would result in similar information no longer being supplied and the record does not qualify for exemption under section 17(1)(b).

#### SECTIONS CONSIDERED

17(1)(a)

#### PREVIOUS ORDERS CONSIDERED

16, P-345

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### ORDER P-360

#### APPEAL P-911109

Institution: Ministry of Community and Social Services

NOVEMBER 3, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • employment history • highly sensitive • presumption of • unjustified invasion of • another individual's personal privacy

The Ministry received a request for access to records relating to an allegation of harassment made by the requester against another person. The requester subsequently clarified that she was seeking access to any notes, memos or reports which interpret her complaints and any summaries of her descriptions of the actions on which her complaints were based.

The Ministry notified three individuals named in the record and asked them for their views regarding disclosure. The three individuals did not consent to disclosure and the Ministry informed the requester that access was denied pursuant to section 49(b) of the *Act*.

#### ORDER

The decision of the Ministry was not upheld.

The information contained in the record is the personal information of both the appellant and other individuals.

Section 49 provides a number of exemptions to the general right of access. Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against the individuals right to the protection of his/her privacy.



The information which relates to individuals other than the appellant cannot accurately be characterized as employment history and, therefore, section 21(3)(d) does not apply. Section 21(2)(f) does not apply to the records as the information is not highly sensitive. Therefore, disclosure of the records would not constitute an unjustified invasion of the personal privacy of individuals other than the appellant and the exemption under section 49(b) of the *Act* does not apply.

**SECTIONS CONSIDERED**

2(1), 49(b),

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER P-361**

**APPEAL P-9200330**

Institution: Ministry of the Environment

NOVEMBER 3, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

cabinet records

The Ministry received a request for access to any studies or reports, prepared by government staff or outside consultants, dealing with the proposed establishment of the Ontario Water and Sewer Crown Corporation. Access to two reports was denied pursuant to sections 12(1)(b), (d), (e) and 13(1) of the *Act*.

**ORDER**

The Ministry's decision was upheld.

The first report qualified for exemption pursuant to section 12(1)(b) as it contained policy options or recommendations and it was established that the report had been submitted to Cabinet Committee on environmental policy on two separate occasions.

The second report was not submitted to Cabinet or one of its Committees but it is properly exempt pursuant to the introductory wording of section 12(1) because its disclosure could reveal the substance of deliberations of a Committee of the Executive Council.

**SECTIONS CONSIDERED**

12(1)(b), 12(1)

**PREVIOUS ORDERS CONSIDERED**

P-226, P-293

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**ORDER P-362**

**APPEAL P-911034**

Institution: Ministry of the Solicitor General

NOVEMBER 3, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

deceased persons • personal information  
• medical records • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • personal privacy

The Ministry received a request for access to any information relating to the blood alcohol levels of the five deceased persons. The Ministry denied access to the information pursuant to sections 14 (2) and 21 of the *Act*.

**ORDER**

The Ministry's decision was upheld.

The record at issue, the post mortem forensic test results of the blood and urine analysis of the blood alcohol concentration of five persons who were killed, is personal information. Section 2(2) of the *Act* does not apply as the deaths occurred within the past 30 years.

The test results relate to the medical condition of the five deceased persons at the time of their death. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under sec-

tion 21(3)(a) have been established.

The record at issue does not contain any information relevant to section 21(4). Section 21(2)(d) is not a relevant consideration and the presumption is not rebutted. Therefore, the disclosure of the record at issue would constitute an unjustified invasion of the personal privacy of the five deceased persons.

**SECTIONS CONSIDERED**

21(3)(a), 21(2)(d)

**PREVIOUS ORDERS CONSIDERED**

P-312

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**ORDER P-363 \***

**APPEAL P-911166**

Institution: Ontario Human Rights  
Commission

NOVEMBER 4, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • presumption of  
• unjustified invasion of • personal privacy  
• advice to government • law enforcement  
• report • confidential source • witness  
statements

The OHRC received a request for material relating to a complaint filed by the requester. The Commission released some of the material and denied access to the remainder, either in whole or in part, claiming sections 13(1), 14(2)(a), 21(3)(b) and (d), 14(1)(d), 17(1)(b), 49(a) and (b) of the *Act*.

**ORDER**

The institution's decision was partially upheld.

Some parts of the record contain the personal information of the appellant and/or other identifiable individuals. Other parts do not contain personal information.

Disclosure of the names of co-workers, which were provided by the appellant, would not constitute an unjustified invasion of the personal privacy of these individuals. Disclosure of other information which has been provided in its entirety to the appellant would not constitute an unjustified invasion of the personal privacy of any individual referred to in the record.

Some information contained in the record was compiled as part of an investigation into a possible violation of law and, therefore, satisfies the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b). These records do not contain any information relevant to section 21(4) and there is no combination of factors listed in section 21(2) which would operate to rebut the presumption of an unjustified invasion of personal privacy. Therefore, the presumption raised by section 21(3)(b) of the *Act* applies.

The discretionary exemption provided by section 14(2)(a) does not apply to the "Fact Sheet", the "Intake Report", the notes of telephone conversations and interviews and the "Case Disposition" form, as they do not meet the definition of report.

Section 14(1)(d) would not apply to the record as disclosure would not identify the witnesses who provided statements during the course of the Commission's investigation. The names of the witnesses have been protected under section 21.

The discretionary exemption provided by section 13 of the *Act* applies only to the parts of the record that can be properly characterized as advice or recommendations.

Section 49(a) provides an exemption to the general rule that a requester has a general right of access to his or her own personal information. The Commission has the discretion to refuse to disclose to the appellant his own personal information where section 13 applies.

#### SECTIONS CONSIDERED

2(2), 21, 14(2)(a), 14(1)(d), 13(1), 49(a)

#### PREVIOUS ORDERS CONSIDERED

89, 178, 208, P-253, 200

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### ORDER P-364

#### APPEAL P-9200052

Institution: Ministry of Agriculture and Food

NOVEMBER 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • business\personal information • financial history  
• presumption of • unjustified invasion of  
• personal privacy

The Ministry received a request for access to a report that was prepared by a staff veterinarian about a cattle farming operation. The Ministry denied access to the report pursuant to section 21(1) of the *Act*.

#### ORDER

The Ministry's decision was upheld.

There is a sufficient nexus between the affected parties' personal finances and the contents of the report to properly consider the information to be the personal information of these persons.

The record at issue describes the assets of the affected parties, as well as their financial history and/or activities. Accordingly, the requirements for a presumed unjustified invasion of the personal privacy under section 21(3)(f) has been established. The report does not contain

any information relevant to section 21(4). There is no combination of factors listed in section 21(2) which would operate to rebut the presumption of an unjustified invasion of personal privacy. Therefore, the disclosure of the information contained in the record would constitute an unjustified invasion of the privacy of the affected parties.

#### SECTIONS CONSIDERED

2(2), 21(3)(f), 21(4), 21(2)

#### PREVIOUS ORDERS CONSIDERED

113

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### ORDER P-365

#### APPEAL P-9200048

Institution: Ministry of Housing

NOVEMBER 12, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

solicitor client privilege • personal information • medical, psychiatric or patient records • presumption of  
• unjustified invasion of • personal privacy

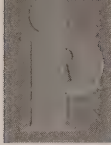
The Ministry received a request for access to records relating to the requester. Access to six parts of the record, a six-page memorandum from a staff member of the Huron County Housing Authority to the Chair and members of the Authority, was denied pursuant to section 19. Access to two parts of the record was denied pursuant to section 21.

#### ORDER

The Ministry's decision was partially upheld.

The Ministry failed to establish the requirements for exemption under part one of the branch one section 19 test. The record is not a communication between a client and a legal advisor. Further, the record is not directly related to seeking, formulating or giving legal advice.





Parts of the record contain the personal information of the appellant only; other parts contain the personal information of the individuals other than the appellant.

Information which relates to the medical condition of several employees falls squarely within the scope of section 21(3)(a). The records do not contain information relevant to section 21(4). There is no combination of factors under section 21(2) which would apply to rebut the presumption.

Section 21 of the *Act* applies to the other parts of the record. None of the exemptions contained in section 21(1) apply. Therefore the mandatory exemption provided by section 21 of the *Act* applies to prohibit disclosure.

#### SECTIONS CONSIDERED

19, 2(1), 21

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER P-366 APPEAL P-911150

Institution: Ministry of the Environment

NOVEMBER 13, 1992

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

fees • regulations • fee waiver

The Ministry received a request for access to records relating to the investigation of complaints against a paving and excavating company and an individual. The Ministry informed the requester that a fee of \$37.50 was required to process the request. The requester sought waiver of the fee on the grounds that payment of the fee would cause him financial hardship and that dissemination of the record would benefit public health. The Ministry decided not to waive the fee.

#### ORDER

The decision of the Ministry was upheld.

The *Act* is silent as to who bears the burden of proof in respect of section 57(4); however, it has been stated in a number of previous orders that this section requires the requester to provide adequate evidence to support a claim for a fee waiver. The appellant did not provide any evidence to support his claim.

#### SECTIONS CONSIDERED

57(4), Regulation 516/90, 8

#### PREVIOUS ORDERS CONSIDERED

31, 95

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### ORDER P-367 APPEAL P-910876

Institution: Ontario Hydro

NOVEMBER 16, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

third party information • tender or bid  
• financial • commercial • "supplied" • "in confidence" • reasonable expectation of  
• harm • competitive position

Ontario Hydro received a request for access to copies of all tenders submitted and the final contract or contracts awarded in relation to a particular tender for clerical and drafting supplies. Ontario Hydro denied access to the tender material under section 17(1)(a) and (c) of the *Act* and stated that no information relating to the contract existed. The requester appealed only the denial of access to the tender material.

#### ORDER

Ontario Hydro's decision was partially upheld.

The information contained in the tender submitted by five companies relates to the sale and purchase of materials, out-

lines each company's quote of the cost to supply Ontario Hydro with clerical and drafting supplies and includes a description of its electronic transmission capabilities. This information qualifies as commercial and/or financial information.

In light of Ontario Hydro's tendering process for the matter, the tenders were supplied by the companies to Ontario Hydro in confidence.

Because one of the companies is no longer in existence, no harm can result from disclosure of the records related to it. However there is sufficient evidence to support the assertion that disclosure of the records supplied by the remaining four companies might reasonably be expected to significantly prejudice the competitive position of these companies. Therefore all three parts of the section 17 test have been met in respect of the records.

#### SECTIONS CONSIDERED

17

#### PREVIOUS ORDERS CONSIDERED

36

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### ORDER P-368 APPEAL P-900377

Institution: Ministry of the Attorney General

NOVEMBER 18, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

wiretap application • public information  
• discretion • relations with other governments • information received in confidence • solicitor client privilege  
• personal information • witness statements • compiled as part of investigation • relevant to • fair determination of rights • presumption of  
• unjustified invasion of • personal privacy

The Ministry received a request for access to all information regarding any charges relating to the requester, including any wiretap application records. The records were located in the Crown Law Office, Criminal and in the Office of the Director of Criminal Prosecutions. The institution denied access to the records pursuant to sections 22(a), 13(1), 14(1)(c), 14(1)(d), 14(1)(e), 19 and 21 of the *Act*. The existence of wiretap application records was neither confirmed nor denied, pursuant to section 14(3) of the *Act*.

#### ORDER

The Ministry's decision was partially upheld.

The doctrine of federal legislative paramountcy operates so as to exclude requests for wiretap applications from the scope of the *Act*.

Transcripts of trial proceedings, factums, appeal books, case books, court notices, court forms and endorsements qualify for exemption pursuant to section 22(a) of the *Act* as all of this information is currently available to the public. However, there is nothing in the *Act* which prevents the Ministry from disclosing records which are properly exempt under section 22(a).

A package of records which was compiled by the RCMP and supplied to Police, who in turn provided it to the Ministry, satisfies the requirement for exemption under section 15(b). The disclosure of these records would reveal information received from another government or its agency, the RCMP, in confidence. The expectation of confidentiality survives the passing of the documents from the RCMP to the Police and on to the Ministry, in the circumstances of this appeal.

Section 19 applies to information prepared by or for Crown Counsel in contemplation of litigation in both the Crown Law Office and Criminal Prosecution Files.

Statements of a witness contained in a Criminal Prosecution File contain the personal information of individuals other than the appellant. With the exception of certain names, invoices submitted by an accounting firm do not contain personal information. The social insurance number of a physician who examined a witness and the name of the witness is personal information of individuals other than the appellant.

The witness statements were compiled as part of an investigation into a possible violation of law and satisfy the requirements of section 21(3)(b). Section 21(4) does not apply to this information. Section 21(2)(d) would not be sufficient to rebut the presumed unjustified invasion of personal privacy.

The disclosure of the names and the social insurance number would constitute an unjustified invasion of the personal privacy of these individuals.

#### SECTIONS CONSIDERED

14(3), 22(a), 19, 15(b), 2(1), 21

#### PREVIOUS ORDERS CONSIDERED

P-344, 210, M-28

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### ORDER P-369

#### APPEAL P-900610

Institution: Archives of Ontario

NOVEMBER 18, 1992

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

relations with other governments  
• received in confidence • personal  
information • law enforcement report  
• compiled as part of investigation

• information relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • personal privacy

The Archives received a request transferred to it from the Ministry of the Solicitor General for access to all information relating to a fire that occurred at the requester's residence in August 1978. Partial access was granted. Access was denied to the remaining pages in whole or in part pursuant to sections 14(1)(d), (e), (g), 14(2)(a), 15(b) and 21(1)(f) of the *Act*.

#### ORDER

The Archives' decision was partially upheld.

Section 15(b) applies to a letter which was received in confidence by the OPP from the RCMP. Disclosure of this record would reveal information received in confidence.

Information severed from the record which relates to the names and titles of individuals acting in their professional or business capacities can not be categorized as personal information. As no other exemptions have been claimed for this information and since no mandatory exemptions apply they should be disclosed to the appellant.

The remaining parts of the records at issue contain personal information of individuals other than the appellant. This personal information was compiled and is identifiable as part of an investigation into a possible violation of law, namely an arson investigation conducted by the OPP and the Office of the Fire Marshall. They do not contain information relevant to section 21(4). Section 21(2)(d) would not be sufficient to rebut the presumed unjustified invasion of the privacy of the individuals to whom the information relates.





**SECTIONS CONSIDERED**

15(b), 2(1), 21

**PREVIOUS ORDERS CONSIDERED**

17, 10, M-28

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**ORDER P-370**

**APPEAL P-9200451**

Institution: Ministry of Natural Resources

NOVEMBER 19, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

- personal information • name of original requester • pecuniary or other harm
- presumption of • unjustified invasion of
- personal privacy

The Ministry received a request for access to copies of correspondence between an individual and the Ministry, in which the requester had been referred to by name. The Ministry decided to grant access to those parts of the correspondence in which the individual expressed opinions about the requester and notified the individual of its decision. In response, the individual asked for the name of the original requester. The original requester advised the Ministry that he/she wished to remain anonymous. The Ministry refused to inform the individual of the name of the original requester, relying on section 21 of the *Act*. The individual appealed the Ministry's decision to deny access to the name.

**ORDER**

The Ministry's decision was upheld.

Disclosure of the name of the requester would reveal both the fact that the original requester made a request under the *Act* and the nature of the request. Therefore, the name of the requester is personal information as defined by the *Act*.

The *Act* does not specifically or impliedly impose a general rule of non-disclosure

of the names of requesters. The fairest approach in adjudicating the issue is to weigh any competing rights of the requester and any other parties.

The right of the original requester to anonymity must be balanced against the right of the appellant to know the name of the person who requested access to information which may be the personal information of both the appellant and the original requester. On balance, the disclosure of the name of the requester would be an unjustified invasion of his/her personal privacy. The original requester's interest in maintaining his/her anonymity outweighs the appellant's interest in knowing his/her identity.

**SECTIONS CONSIDERED**

21, 2

**PREVIOUS ORDERS CONSIDERED**

27

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**ORDER P-371**

**APPEAL P-9200452**

Institution: Ministry of Natural Resources

NOVEMBER 19, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

- Commissioner • consideration of section not raised by institution • personal information • highly sensitive • supplied in confidence • presumption of • unjustified invasion of • another individual's
- personal privacy

The Ministry received a request for access to copies of correspondence between an individual and the Ministry in which the requester had been referred to by name. The Ministry decided to grant access to those parts of the correspondence in which the individual expressed opinions about the requester, and notified the individual of its decision. The individual appealed the Ministry's decision to release parts of

his correspondence to the requester.

**ORDER**

The Ministry's decision was upheld.

Three sentences or parts of sentences, in which the appellant expresses his personal opinions about the original requester are properly characterized as personal information of the original requester. In the remaining parts of the record, the appellant describes his personal opinions about events involving himself and the original requester. These sentences or parts of sentences are properly characterized as the personal information of both the appellant and the original requester.

With respect to the personal information of both the appellant and the original requester, none of the factors which suggest that disclosure would result in an unjustified invasion of the appellant's personal privacy have been established or are evident on the face of the record. Therefore, disclosure of the information contained in that part of the record would not constitute an unjustified invasion of the affected person's personal privacy and section 49(b) does not apply. Section 49(b) cannot apply to those portions of the record which contain the personal information of the requester only.

**SECTIONS CONSIDERED**

21, 49(b)

**PREVIOUS ORDERS CONSIDERED**

P-257

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**ORDER P-372**

**APPEAL P-911136**

Institution: Ministry of the Solicitor General

NOVEMBER 24, 1992

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

police report • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy • another individual's  
personal privacy

The Ministry received a request for access to an investigator's report and recommendations relating to the investigation of the requester's complaint against three Ontario Provincial Police officers. Specifically, the requester wanted access to the statements of the three officers and any information relating to the investigator's conclusion that the requester and his lawyer did not agree as to the course of events which led to the complaint. The requester also sought access to a report of the number of complaints made against the police officers in the last five years. The Ministry notified eight individuals of the request and asked them for their views regarding disclosure of the record. Seven objected to disclosure of any personal information that related to them. The Ministry denied access to 39 pages in whole or in part pursuant to sections 14(2)(a), 49(a) and 49(b) of the *Act*.

#### ORDER

The Ministry's decision was upheld.

All of the information contained in the record is personal information. All of the information with the exception of two pages relates to both the appellant and other identifiable individuals.

The record which contains the personal information of both the appellant and other individuals relates to the Ontario Provincial Police investigation into allegations of breaches of the Code of Offences of Regulation 791 under the *Police Act* and possible violations of the *Criminal Code of Canada* by three Officers. All of the personal information contained in

the record was compiled and is identifiable as part of an investigation into a possible violation of law and, accordingly, its disclosure would constitute an unjustified invasion of personal privacy under section 21(3)(b). The record does not contain information relevant to section 21(4). The appellant has not specifically addressed any of the factors identified in section 21(2). Therefore the presumption raised by section 21(3)(b) has not been rebutted and the exemption under section 49(b) of the *Act* applies.

The two pages which contain the personal information of individuals other than the appellant also satisfy the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b). Section 21(4) is not relevant and no combination of circumstances under section 21(2) exists to rebut the presumption established under section 21(3)(b).

#### SECTIONS CONSIDERED

21, 49(b)

#### PREVIOUS ORDERS CONSIDERED

P-285

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### ORDER P-373

APPEALS P-910306, P-910307,  
P-910308, P-910309, P-910310

Institution: Workers' Compensation Board

NOVEMBER 24, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

representations in appeal • time limit for  
submitting representations • time  
extension • affected persons • mediation in  
appeal • request narrowed • discretionary  
exemption • third party information  
• financial • commercial • labour relations  
• trade secret • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position • undue loss  
or gain • tax information • confidentiality  
provision in other *Act*

The Board received a request for the names, addresses and any other available information for any companies who have been penalized, fined, penalty rated or were caused to be charged additional funds by the Board under the Board's programs known as the New Experimental Experience Rating Program (NEER), the Construction Experience Rating Program (CAD7), the Workwell Program (WORKWELL), the Section 91(7) Penalties Program (SECTION 91(7)) and the Voluntary Experience Rating Program (VER). The Board denied access to the responsive records pursuant to section 17(1)(a) and (c) and 17(2) of the *Act*. The requester appealed the Board's decisions.

#### ORDER

The Board's decision was not upheld.

During mediation the appellant narrowed his request to the 50 companies with the highest penalties, fines or penalty ratings.

Each of the 247 employers whose names appear in the records, as well as five employer associations, were notified of the appeal and provided with an opportunity to submit representations.

Some of the employers and employer associations raised objections to the time period allowed for submitting written representations and the number of employers who were notified of the appeal.

The authority to set time limits for the receipt of representations and to implement procedures for identifying and notifying affected persons is included in the implied power to develop and implement rules and procedures for the parties to an appeal. The procedures followed for the setting of time limits for receipt of representations and the identification of parties were appropriate in the circumstances of these appeals.



Some of the employers submitted that section 14 of the *Act* applies to the records. Section 14 is the discretionary exemption that may be claimed by the Board. The Board has not cited this section as the basis of exempting any of the records and therefore it is not at issue in these appeals and will not be addressed in the order.

Some records list the names and addresses of the employers with the 50 highest surcharges in 1991, together with the amount of surcharge for each employer. Others list only the names and addresses of the employers with the highest penalties in 1990 under the relevant program.

The information which relates to the amount of surcharge levy or penalty the employers were assessed under the *Workers' Compensation Act* qualifies as financial information.

The records which contain only the names and addresses of the employers do not contain any information about the amounts of surcharge, or the nature and volume of accidents. It is not accurate to characterize the names and addresses as commercial, financial or labour relations information, or a trade secret. Therefore, this information does not meet the first part of the test for exemption under section 17(1).

The surcharge amounts were not "supplied" to the Board by the employers; rather, they were calculated by the Board. While the information supplied on various forms was used in the calculation of the surcharges, it is not possible to ascertain the actual information provided from the surcharge amount themselves.

The information that an employer operates within an industry which falls within the jurisdiction of the *WCA* is a function

of the industry in which it operates. The names and addresses of the employers were not supplied to the Board in confidence. It is the financial, commercial and personal information contained on the forms which was supplied in confidence and none of this information would be revealed through disclosure of the records. Therefore, the records do not meet the second part of the test for exemption under section 17.

The evidence regarding harm that could result of a negative interpretation of the information contained in the record is not sufficient to establish the third part of the section 17 exemption test. The evidence consists of generalized assertions of fact and what amounts to, at most, speculations of possible harm.

The assessment of surcharges and penalties under Ontario's *WCA* cannot properly be considered information which is "gathered for the purpose of determining tax liability or collecting tax" under section 17(2) of the *Act*; to find otherwise would be inconsistent with the legislative intent of section 17(2) and existing jurisprudence.

#### SECTIONS CONSIDERED

17(1)(a) and (c), 17(2)

#### PREVIOUS ORDERS CONSIDERED

164, 36

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### ORDER P-374

APPEALS P-910590, P-911122,  
P-910956, P-910989, P-910991,  
P-911137

Institution: The Ministry of Health

DECEMBER 3, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

application of the *Act* • psychiatric patient  
• clinical record

The Ministry received six separate requests from care givers employed by the Kingston Psychiatric Hospital. Each request was for information concerning the care giver that may be in the possession of the Psychiatric Patient Advocate Office (PPAO) at Kingston Psychiatric Hospital or in Toronto. The Ministry denied access to all responsive records pursuant to section 65(2)(b) of the *Act*.

#### ORDER

The Ministry was ordered to provide each of the appellants with a proper decision letter.

The sole issue to be determined in the appeal is whether the PPAO records fall within the scope of section 65(2)(b) of the *Act*. Section 65(2) was included in the *Act* for two reasons: to acknowledge the extra sensitivity of records relating to the care and treatment of psychiatric patients and to recognize the separate access and privacy scheme for psychiatric patient records under the *Mental Health Act*.

All parties agreed that PPAO records do not form part of the patient's "clinical record". Records which fall under section 65(2)(b) are not covered by the alternate access scheme contained in the *Mental Health Act*. To be consistent with the purposes of the *Act*, subsection (b) should be read restrictively.

In order for a record to fall within the scope of section 65(2)(b), it must contain the types of information listed in the section, it must be in respect of a psychiatric patient and it must have a clinical purpose, nature or value. The records which the advocates maintain do not have a sufficient clinical purpose, nature or value to properly fall with the scope of section 65(2)(b).

The more broadly section 65(2)(b) is interpreted, the more types of records which could contain personal information of individuals other than psychiatric patients would be excluded from this scope of the *Act*. It would be inconsistent with the underlying principles of the *Act* to interpret section 65(2)(b) in a way which would deny psychiatric patients the statutory right of access to their own personal information contained in records which qualify under section 65(2)(b) or would create a broad category of records which were inaccessible to anyone under either the *Act* or the *Mental Health Act*. Therefore, the PPAO records do not fall within the scope of section 65(2)(b) of the *Act*.

**SECTIONS CONSIDERED**

65(2)(b)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER P-375**  
**APPEAL P-920188**

Institution: Centennial College of Applied Arts and Technology

DECEMBER 4, 1992

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record • record does not exist • personal information • education history • supplied in confidence • relevant to • fair determination of rights • presumption of • unjustified invasion of • another individual's personal privacy

The College received a request for access to all communications from students to the School of Continuing Education in the nature of a complaint and the names and addresses of the complainant(s). The College did not respond to his request within the statutory time frame and was deemed to have refused access to the

requested records as provided in section 29(4) of the *Act*.

During mediation, the College identified and disclosed a memo to the appellant. The College also identified an undated handwritten letter received by the College from an individual. The individual consented to the release of a typewritten version of the letter with all identifying factors relating to the author blacked out. The College then released a typewritten transcript of the letter with severances relating to the identity of the individual. The College denied access to the identity of the individual pursuant to sections 49(b) and 21 of the *Act*. The appellant appealed the College's decision to deny access to the identity of the individual and maintained that there were other records responsive to his request which the College had failed to identify.

**ORDER**

The College's search for responsive records was reasonable in the circumstances. The decision of the College regarding access was upheld.

Affidavits from the College described in detail the steps taken to locate records responsive to the request and confirmed that no additional records were found.

All the information contained in the records falls within one or more of paragraphs (b), (d), (e) and (h) of the definition of personal information under section 2(1) of the *Act*, and relates to both the appellant and the individual. The identity of the individual is personal information that relates to both the appellant and the individual.

The record does not contain any information that relates to the educational history of the individual. Therefore, the requirements for a presumed unjustified

invasion of personal privacy under section 21(3)(d) have not been satisfied. The College has provided no evidence that the individual to whom the information relates will be exposed unfairly to pecuniary or other harm (section 21(2)(e)). The appellant has not provided sufficient evidence to support a finding that the personal information is relevant to a fair determination of rights (section 21(2)(d)). No other factors under section 21(2) or any other provisions of the *Act* apply in favour of disclosure of the information. The College has provided sufficient evidence to establish the relevance of section 21(2)(h) in the circumstances of this appeal. Accordingly, the identity of the affected person was supplied to the College in confidence and, disclosure of the identity of the individual would be an unjustified invasion of his/her privacy.

**SECTIONS CONSIDERED**

2(1), 49(b), 21

**PREVIOUS ORDERS CONSIDERED**

37, P-312

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**ORDER P-376**  
**APPEAL P-9200641**

Institution: Management Board of Cabinet

DECEMBER 7, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

cabinet records

The Management Board of Cabinet (MBC) received a request for access to all correspondence between MBC and the Ministry of Labour on the proposed reform of the *Crown Employees Collective Bargaining Act*. MBC provided access to six responsive records and denied access to one record pursuant to section 12(1), 13(1), 18(1)(f) and (g) of the *Act*.



#### ORDER

The decision of MBC was upheld.

The record consists of a four page memorandum which summarizes a draft Cabinet Submission and contains the authors comments on the substance of the draft Cabinet Submission. In its representations, MBC indicated that it is relying only on the introductory wording of section 12(1) and section 12(1)(d) as the basis for denying access to the record. Disclosure of the record would reveal the substance of deliberations of the Committee of the Executive Council, specifically MBC and therefore, the record is properly exempt pursuant to the introductory wording of section 12(1).

#### SECTIONS CONSIDERED

12(1)

#### PREVIOUS ORDERS CONSIDERED

22, P-226, P-293, P-331, P-361

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### ORDER P-377 APPEAL P-910589

Institution: The Georgian College of  
Applied Arts and Technology

DECEMBER 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

law enforcement • solicitor client privilege  
• personal information • highly sensitive  
• supplied in confidence • presumption of  
• unjustified invasion of • another  
individual's personal privacy

The College received a request for access to all records relating to the College's decision to serve a "Notice: Trespass to Property Act" (the Notice) on the requester. The College denied access to all responsive records, except the actual Notice, pursuant to sections 19 and 14 of the *Act*.

#### ORDER

The decision of the College was partially upheld.

All of the records contain the personal information of the appellant. Information concerning College staff, faculty and/or members of the Administration of the College was provided by individuals in their professional capacity or the execution of employment responsibilities and is not the personal information of these individuals. A letter sent to the College by two individuals contains personal information of both the appellant and the individuals.

The investigation conducted by the College which led to the issuance of the Notice is properly characterized as an internal administrative decision which does not satisfy the requirements of the definition of "law enforcement" contained in section 2(1). It was not undertaken with a view to providing a court or tribunal with the facts by which it would make a determination of a parties rights.

Four pieces of correspondence to the College from a legal advisor retained by the College in the context of its decision to issue the Notice, each satisfy the requirements for exemption under branch one of the common law solicitor-client exemption: they are written communications, of a confidential nature, sent by a legal advisor to a client, and directly relate to the giving of legal advice. The College has properly exercised its discretion under section 49(a) of the *Act*.

None of the factors which would give rise to a presumed unjustified invasion of the individual's privacy are relevant considerations in the context of the record that contains the personal information of both the appellant the individuals.

Neither the College nor the individuals have provided sufficient evidence to establish the relevance of section 21(2)(e). Some of the parts of the record contain "highly sensitive" information, but, section 21(2)(f) is not a relevant consideration for the remaining parts of the record. The same parts of the record that are "highly sensitive" were provided by the individuals with an implied expectation of confidentiality, therefore, section 21(2)(h) is a relevant consideration with respect to those parts of the record. Section 21(2)(d) is also a relevant consideration in the circumstances of this appeal.

Disclosure of the parts of the record which were provided to the College implicitly in confidence and contain highly sensitive information concerning the individuals would constitute an unjustified invasion of those individuals privacy and qualify for exemption under section 49(b) of the *Act*. These parts include references which would serve to identify the individuals. The disclosure of the remaining parts of the record would not constitute an unjustified invasion of personal privacy. The College has properly exercised its discretion under section 49(b) as it relates to those parts of the record which are properly exempt.

#### SECTIONS CONSIDERED

2(1), 14, 19, 21(2)(e), (f), (h) and (d)

#### PREVIOUS ORDERS CONSIDERED

113, 139, 157, P-257, P-326, 170,  
182, 192, 37

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### ORDER M-34 APPEAL M-910061

Institution: City of Kitchener

SEPTEMBER 4, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

law enforcement • report

The appellant requested access to copies of work orders issued by the institution against various rental residential properties. The institution denied access to the records pursuant to section 8(2)(a) of the *Act*.

During the course of the appeal the institution indicated that it was also relying on section 8(1)(a) of the *Act* to deny access to the records, and the appellant indicated that the names and addresses of the property owners could be severed from the records.

#### ORDER

The institution was ordered to disclose the records, with the names and addresses of the owners severed.

The City's property standards enforcement process qualifies as "law enforcement" under the *Act*, however the records, which were notifications of repairs to be effected, did not qualify as reports, and section 8(2)(a) did not apply.

Disclosure of the records could not reasonably be expected to jeopardize the City's ability to regulate compliance with the by-law or the court process, and section 8(1)(a) did not apply.

#### SECTIONS CONSIDERED

2(1), 8(1)(a), 8(2)(a)

#### PREVIOUS ORDERS CONSIDERED

188, M-15

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### ORDER M-35

#### APPEAL M-910064

Institution: The Corporation of the Township of Osprey

SEPTEMBER 4, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • employment  
• information • presumption of  
• unjustified invasion of • personal privacy

The appellant requested access to the number of hours each employee worked during the month of January, 1991. The township denied access to the records pursuant to section 14 of the *Act*.

#### ORDER

The Township's decision was upheld.

The record consisted of recorded information about identifiable individuals and qualified as personal information.

Actual hours worked by an employee does not fall within the meaning of the words "employment history", and did not meet the requirements of section 14(3)(d).

Because the Township set the exact hourly wage of each employee by a by-law, the exact hourly wage was public knowledge. Disclosure of the actual hours worked would constitute disclosure of their actual income, and such disclosure is presumed to be an unjustified invasion of personal privacy under section 14(3)(f).

The records did not contain any information that pertains to section 14(4), and section 14(4) did not operate to rebut the presumption under section 14(3)(f). No public demand for scrutiny of the activities of the Township had been shown, and the right to the information asserted by the appellant was not the type of right contemplated by section 14(2)(d). Accordingly, the presumption was not rebutted, and disclosure of the record would constitute an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

2(1), 14

#### PREVIOUS ORDERS CONSIDERED

20

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### ORDER M-36

#### APPEAL M-910302

Institution: City of Toronto

SEPTEMBER 10, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

third party information • technical  
• commercial • financial • "supplied" • "in confidence" • whether able to raise exemption not relied upon by institution  
• personal information

The City received a request for access to all information relating to the construction of storm sewers in a particular area of Toronto. Following notification of a company, the City decided to grant access to the records. The company appealed the City's decision.

#### ORDER

The City was ordered to disclose the records.

The records contained technical, commercial or financial information. One of the records was not supplied to the City by the company, and the remaining records were not supplied in confidence. Accordingly, section 10 did not apply.

Section 11 is a discretionary exemption which was not raised by the institution, and did not apply to the records.

The names of the individuals mentioned in the records appear there solely in their capacity as representatives of the company and did not constitute personal information.

#### SECTIONS CONSIDERED

2(1), 10, 11

#### PREVIOUS ORDERS CONSIDERED

80, 87, 101, 113, 166, 204, P-218,  
P-228, P-241, P-257, M-10, M-29





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## ORDER M-37 APPEAL M-910199

Institution: North Bay Hydro

SEPTEMBER 14, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

- third party information • technical
- copyright • “supplied” • “in confidence”
- reasonable expectation of • harm
- economic interests • competitive position

The appellant requested access to information relating to the classification of his position under the institution's proposed pay equity plan. The institution denied access to the record pursuant to sections 10 and 11 of the *Act*. During the course of the appeal, the institution indicated that it was relying on sections 10(1)(a), 11(c), (d) and (e) of the *Act* to deny access to the record.

### ORDER

The institution was ordered to disclose the record.

The record contained technical information. The institution and the affected party failed to establish that the record was supplied in confidence. Access provided under the *Act* does not negate copyright protection with respect to further use or distribution of the information, and sufficient evidence to establish that disclosure of the record would give rise to a reasonable expectation that one of the types of harms specified in section 10(1)(a) would occur was not provided. Accordingly, section 10 did not apply.

Disclosure of the record could not reasonably be expected to prejudice the economic interests or the competitive position of the institution, because it had a process in place for dealing with employee concerns about their position evaluations, and the institution's

employees cannot engage in individual bargaining. Accordingly, section 11 did not apply.

### SECTIONS CONSIDERED

10(1)(a), 11(c), 11(d), 11(e)

### PREVIOUS ORDERS CONSIDERED

80, 101, 166, 204, P-218, P-228, P-241, M-10, M-27, M-29

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## ORDER M-38 APPEAL M-920066

Institution: Kirkland Lake Police Service

SEPTEMBER 16, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

- personal information • name • address
- presumption of • unjustified invasion of
- personal privacy

The appellant requested access to the names and addresses of two children allegedly involved in a fire which occurred in Kirkland Lake in September 1990. The Police denied access to the names and addresses of the children pursuant to section 14 of the *Act*.

### ORDER

The decision was upheld.

Because there was an investigation into a possible violation of law, section 14(3)(b) applied and disclosure of the information would constitute a presumed unjustified invasion of personal privacy.

The provisions of section 14(4) were not relevant in the circumstances of this appeal, and therefore did not operate to rebut the presumption under section 14(3)(b). The names and addresses were relevant to a fair determination of the right of the insurance company which retained the appellant to pursue a subrogated insurance claim and recover losses, but this alone was not sufficient to

rebut the presumption contained in section 14(3)(b). Accordingly, disclosure of the names and addresses of the two children would constitute an unjustified invasion of personal privacy.

### SECTIONS CONSIDERED

14

### PREVIOUS ORDERS CONSIDERED

20, P-312

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## ORDER M-39 APPEAL M-910216

Institution: Metropolitan Licensing Commission

SEPTEMBER 24, 1992

(COMMISSIONER WRIGHT)

### KEYWORDS

- personal information • address
- unjustified invasion of • presumption of
- personal privacy

The appellant requested access to the name and address of a vendor having a particular licence number.

The MLC granted access to the name of the vendor, but denied access to the vendor's home address under section 14 of the *Act*.

### ORDER

The MLC's decision was upheld.

The address of the vendor qualified as personal information of the vendor.

Disclosure of the home address of a vendor would not permit the public to scrutinize the activities of the institution, promote public health and safety, or promote informed choice in the purchase of goods and services. The home address of the vendor is not required in order to proceed with a civil action. Accordingly, none of the considerations which weigh in favour of disclosure

apply, and disclosure of the vendor's home address would constitute an unjustified invasion of the vendor's personal privacy.

**SECTIONS CONSIDERED**

2(1), 14

**PREVIOUS ORDERS CONSIDERED**

P-312

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**ORDER M-40  
APPEAL M-910337**

Institution: Township of Mara

SEPTEMBER 24, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

advice to government

The appellant requested access to a copy of an estimate of the cost to complete a subdivision agreement. The Township obtained the estimate to assist it in determining whether all or part of a letter of credit, provided by the developer of the subdivision as security for the installation of services and subdivision agreement compliance, could be released.

The Township denied access to the record pursuant to section 7(1) of the *Act*.

**ORDER**

The Township was ordered to disclose the record.

The record contained information which the Township intended to use when considering whether to release the security provided by the developer. The record did not contain a "suggested course of action" to the Township, and the section 7(1) exemption did not apply.

**SECTIONS CONSIDERED**

7(1)

**PREVIOUS ORDERS CONSIDERED**

94, 118

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**ORDER M-41  
APPEAL M-910391**

Institution: Metropolitan Toronto Police

SEPTEMBER 29, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • name

• presumption of • unjustified invasion of

• personal privacy • law enforcement

• report

The appellant requested access to information pertaining to an investigation of threats alleged to have been made by the appellant at a meeting which took place in a community centre. The Police granted partial access to the record pursuant to sections 8(1)(e), 8(2)(a), 14 and 38(b) of the *Act*.

**ORDER**

The decision of the head was partially upheld.

The record contained personal information of the appellant and another individual. The occurrence number which had been severed from the record did not qualify as personal information. Because there was an investigation into a possible violation of law, section 14(3)(b) applied and disclosure of the information would constitute a presumed unjustified invasion of personal privacy.

The provisions of section 14(4) were not relevant in the circumstances of this appeal, and therefore did not operate to rebut the presumption under section 14(3)(b). None of the factors contained in section 14(2) operated to rebut the presumption of an unjustified invasion of personal privacy. Because disclosure of the information would constitute an unjustified invasion of the personal privacy of another individual, the information qualified for exemption under section 38(b) of the *Act*.

Disclosure of an occurrence number alone would not endanger the life or safety of a law enforcement officer or any other person and therefore section 8(1)(e) does not apply. Further, an occurrence number alone is not a "report" for the purposes of section 8(2)(a).

**SECTIONS CONSIDERED**

14

**PREVIOUS ORDERS CONSIDERED**

None.

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**ORDER M-42  
APPEAL M-9200144**

Institution: Hamilton Wentworth Regional Board of Commissioner's of Police

SEPTEMBER 30, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • presumption of

• unjustified invasion of • personal privacy

The appellant requested access to all information on a police "offence form" including officer's occurrence sheet statements and information about the appellant from two individuals at Stelco. The Police denied access to the records pursuant to sections 8(1)(e), 8(11), 8(2)(a), 13, 14 and 38(a) and 38(b) of the *Act*.

**ORDER**

The decision of the Police was upheld.

The record contained information which qualified as personal information of both the appellant and a number of affected persons. Because there was an investigation into a possible violation of law, section 14(3)(b) applied as disclosure of the information would constitute a presumed unjustified invasion of personal privacy.

Provisions of section 14(4) were not relevant in the circumstances of this appeal,



and, therefore, did not operate to rebut the presumption under section 14(3)(b). The appellant did not establish that the personal information is required to prepare for a proceeding or to ensure an impartial hearing. Therefore, section 14(2)(d) was not a relevant consideration.

Because disclosure of the information would constitute an unjustified invasion of the personal privacy of the affected persons, the exemption under 38(b) of the *Act* applies.

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**SECTIONS CONSIDERED**

38, 14

**PREVIOUS ORDERS CONSIDERED**

P312

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**ORDER M-43**

**APPEAL M-9200209**

Institution: The Corporation of the City of Oshawa

OCTOBER 5, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

law enforcement • confidential source

The appellant requested access to the names and addresses of an individual who made a complaint to the City about the condition of the appellant's property. The institution denied access to the records pursuant to sections 8(2)(b), 8(1)(d) and 14(1) and 14(2)(h) of the *Act*.

**ORDER**

The institution's decision was upheld.

Orders M-4, M-16, M-20 and M-31 all dealt with requests to the same institution for identical information. In those orders, the head's decision to deny access was upheld pursuant to section 8(1)(d) of the *Act*. The institution presented the

same arguments in their representations. The appellant did not identify any circumstances or raise any argument which would distinguish this appeal from the appeals which resulted in those orders.

**SECTIONS CONSIDERED**

8(1)(d)

**PREVIOUS ORDERS CONSIDERED**

M-4, M-16, M-20 and M-31

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**ORDER M-44**

**APPEAL M-9200236**

Institution: The City of North York

OCTOBER 6, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

reasonable steps to locate record • record does not exist

The appellant requested access to information about the amount donated to the Gord and Irene Risk Community Centre, including the names and addresses of all contributors and the amounts they donated between 1990 and 1992. The City provided access to a copy of a cash receipt in the amount of \$2,000 received from the Gord and Irene Risk Sport and Social Club Association. The City advised the requester that no other responsive record existed.

**ORDER**

The City's search for responsive records was reasonable in the circumstances.

The City described the steps taken to locate responsive records and included affidavit sworn by a number of City employees who conducted searches of the Finance Department, the Parks and Recreation Department, the City Clerks Office and the Record and Freedom of Information Departments.

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**ORDER M-45**

**APPEAL M-910457**

Institution: The Walkerton Board of Commissioners of Police

OCTOBER 6, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record • record does not exist

The appellant requested information relating to an investigation based on information which the appellant had provided to the Police.

The Police informed the appellant that the record did not exist.

**ORDER**

The institution's search for the record was reasonable.

Chief of Police provided a sworn affidavit verifying that all areas in the department which would likely contain the requested records had been searched and that he is satisfied that the complaint was not made to any of his officers.

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**ORDER M-46**

**APPEAL M-910268**

Institution: The Corporation of the City of Mississauga

OCTOBER 8, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

law enforcement • investigation • report • refusal to confirm or deny existence of record

The appellant requested access to certain information concerning the development and implementation of policy guidelines regarding the use of private investigation services and to the use of investigative services in his case. The institution

refused to confirm or deny the existence of a record pursuant to section 8(3) of the *Act*. The City claimed if such a record existed, it would be exempt from disclosure under sections 8(1)(a), (b), (c), (d), (g) and 8(2)(c).

During the course of the appeal, the appellant indicated that he was not seeking identifying information of any individuals, including information relating to employees of the City who have been investigated or to name the private investigation firms or their employees.

#### ORDER

The Commissioner disclosed the existence of the record and ordered the institution to disclose portions of the record.

The record may not be withheld from disclosure pursuant to section 8(1) or 8(2) of the *Act*, a condition which must be satisfied before the City may even consider whether to refuse to confirm or deny the existence of a record.

The City's general policies with regard to the use of private investigators and the investigation of the appellant were not undertaken with a view to proceeding in a court or tribunal where penalty or sanction could be imposed.

Even if sections 8(1) or 8(2) had applied to the record, the fact that the Mayor of the City sent a letter to the appellant in which she confirmed both the existence of a policy regarding the use of private investigators and the use of a private investigator to conduct a surveillance of the appellant does not permit the City to argue that disclosure of the existence of a record would relay information to the appellant which would compromise the effectiveness of a possible law enforcement activity.

#### SECTIONS CONSIDERED

2(1), 8(3)

#### PREVIOUS ORDERS CONSIDERED

157, P-338

### ORDER M-47 APPEAL M-910358

Institution: The Espanola Board of Education

OCTOBER 7, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

minutes • personal information • public interest override

The appellant requested access to the minutes of meetings which were held "in camera" to discuss the departure of a former employee of the Board. The Board denied access to the record claiming sections 6(1)(b) and 14 of the *Act*.

#### ORDER

The Board's decision was partially upheld.

Some parts of the record qualified for exemption under section 6(1)(b) as they contained a discussion of personal or financial information of an employee of the Board, as defined by section 207(2) of the *Education Act*. Because the Assistant Commissioner had not been provided with any evidence to indicate subject matter of those parts of the record had been considered in an open meeting in public, section 6(2)(b) did not apply.

The names of individuals which appear in their professional or official capacities do not qualify as personal information.

Section 16 does not apply to records which qualify for exemption pursuant to section 6 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 6(1)(b), 6(2)(b), 16

#### PREVIOUS ORDERS CONSIDERED

M-25

### ORDER M-48 APPEAL M-910214

Institution: Metropolitan Toronto Police

OCTOBER 7, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

police records • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• reasonable steps to locate record • record does not exist

The Police received a request for access to all information in their custody and control about the requester, his wife, and his two children who were both under 16 years of age. The request was co-signed by the requester's wife. The Police denied access to portions of the record pursuant to sections 8, 14, 38(a) and 38(b) of the *Act*.

#### ORDER

The head's decision was partially upheld. The search for responsive records was reasonable in the circumstances.

All of the information at issue is the personal information of the appellant and other identifiable individuals.

The personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore the requirements for a presumed unjustified invasion of the personal privacy of individuals other than the appellant under section 14(3)(b) have been satisfied.



The records did not contain any information that pertains to section 14(4) and section 14(4) did not operate to rebut the presumption under section 14(3)(b). None of the factors under section 14(2) which favour disclosure of the records were present in the circumstances of this appeal. Therefore, disclosure of the personal information contained in the record would constitute an unjustified invasion of the personal privacy of various individuals other than the appellant and qualify for exemption under section 38(b) of the *Act*.

**SECTIONS CONSIDERED**

2(1), 14

**PREVIOUS ORDERS CONSIDERED**

M-22, M-28

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**ORDER M-49  
APPEAL M-910423**

Institution: Metropolitan Toronto Police

OCTOBER 8, 1992

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

- police records • personal information
- compiled as part of investigation
- presumption of • unjustified invasion of
- another individual's personal privacy

The Police received a request for access to information concerning the investigation of allegations of criminal conduct against the requester by a named individual. The Police denied access to portions of the record pursuant to sections 8(1)(a) and (e), 8(2)(a) and (c), 12, 14 and 38 of the *Act*. The requester appealed the decision to deny access. The record consists of a summons application and pages from police officer's notebooks. During mediation the police withdrew their claim for exemption under sections 8(1)(a), 8(2)(a) and (c) and 12 of the *Act*.

**ORDER**

The decision of the Police was partially upheld.

All of the information contained in the record at issue falls within the definition of personal information under section 2(1) of the *Act* and relates to both the appellant and another individual.

The parts of the record at issue qualify for exemption under section 38(b) of the *Act*. Personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law, and the requirements for presumed unjustified invasion of personal privacy of an individual other than the appellant under section 14(3)(b) have been satisfied. The record does not contain any information that pertains to section 14(4), and none of the factors under section 14(2) which favour disclosure are present to rebut the presumption of section 14(3)(b).

**SECTIONS CONSIDERED**

2(1), 14

**PREVIOUS ORDERS CONSIDERED**

M-22, M-28

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**ORDER M-50  
APPEAL M-910409**

Institution: The Municipality of Metropolitan Toronto

OCTOBER 8, 1992

(COMMISSIONER WRIGHT)

**KEYWORDS**

- personal information • deceased persons
- medical, psychiatric or patient records
- presumption of • unjustified invasion of
- personal privacy • deemed not to be
- presumption against disclosure

The Municipality received a request for access to any records relating to the involvement of the Metropolitan Toronto

Department of Ambulance Services in an incident in which the body of an individual was discovered in an apartment. The Municipality denied access to the record in its entirety pursuant to sections 14(1), 14(2)(f), and 14(3)(a) of the *Act*.

**ORDER**

The Municipality's decision was partially upheld.

The record contains recorded information about identifiable individuals, one of whom is deceased. Section 2(2) of the *Act* does not apply as the death occurred within the past 30 years. The appellant, on behalf of the mother of the deceased, was not able to exercise the right of access to the personal information of the deceased because he did not demonstrate that the mother is the "personal representative" of the deceased and that the request for access to information relates to the administration of the estate of the deceased (section 54(a)). Therefore, the appellant's request for information as it relates to the personal information of the deceased and other identifiable individuals must be dealt with under section 14 of the *Act*.

No presumption of an unjustified invasion of the personal privacy of the deceased existed pursuant to section 14(3)(a).

Although section 14(2) of the *Act* identifies some factors that may be relevant in determining whether disclosure of information would constitute an unjustified invasion of personal privacy, the list found in 14(2) is not exhaustive. One unlisted factor is that one of the individuals whose personal information is at issue is deceased. Although the personal information of a deceased individual remains that person's personal information until 30 years after his/her death, upon the death

of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. Information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased. In the circumstances of this appeal, the disclosure of the personal information of the deceased to the appellant would not constitute an unjustified invasion of the personal privacy of the deceased. Disclosure of the personal information of individuals other than the deceased would constitute an unjustified invasion of their personal privacy.

#### SECTIONS CONSIDERED

21(1), 54(a), 14(3)(a), 14(2)

#### PREVIOUS ORDERS CONSIDERED

99, P-294

### ORDER M-51

#### APPEAL M-910410

Institution: The City of Toronto

OCTOBER 8, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • deceased persons  
• medical, psychiatric or patient records  
• presumption of • unjustified invasion of  
• personal privacy • deemed not to be  
presumption against disclosure

The City received a request for access to any records relating to the involvement of the Toronto Fire Department in an incident in which the body of an individual was discovered in an apartment. The City denied access to the record in its entirety pursuant to sections 14(1), 14(2)(f), and 14(3)(a) of the *Act*.

#### ORDER

The City's decision was not upheld.

The record contains recorded information about an identifiable individual, the deceased. Section 2(2) of the *Act* does not apply as the death occurred within the past 30 years. The appellant, on behalf of the mother of the deceased, was not able to exercise the right of access to the personal information of the deceased because he did not demonstrate that the mother is the "personal representative" of the deceased and that the request for access to information relates to the administration of the estate of the deceased (section 54(a)). Therefore, the appellant's requests for information as it relates to the personal information of the deceased must be dealt with under section 14 of the *Act*.

No presumption of an unjustified invasion of the personal privacy of the deceased existed pursuant to section 14(3)(a).

Although section 14(2) of the *Act* identifies some factors that may be relevant in determining whether disclosure of information would constitute an unjustified invasion of personal privacy, the list found in 14(2) is not exhaustive. One unlisted factor is that the individual whose personal information is at issue is deceased. Although the personal information of a deceased individual remains that person's personal information until 30 years after his/her death, upon the death of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. Information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased. In the circumstances of this appeal, the disclosure of the personal information of the deceased to the appellant would not constitute an unjustified

invasion of the personal privacy of the deceased.

#### SECTIONS CONSIDERED

21, 54(a), 14(3), 14(2)

#### PREVIOUS ORDERS CONSIDERED

99, P-294

### ORDER M-52\*

#### APPEAL M-910083

Institution: The Sudbury Regional Police

OCTOBER 14, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

police records • personal information  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• law enforcement • police • investigation  
• report • solicitor client privilege

The Police received a request for access to the reports and statements concerning a charge of first degree murder. The Police identified the record which responded to the request as consisting of three groups of information: a "Crown Brief" and covering letter; pages from two police officers' notebooks and information sent by the appellant to the Ministry of the Solicitor General. The Police granted partial access to the police officers' notebooks. Access to the remainder of the information was denied, either in whole or in part, pursuant to section 8(2)(a), 9(1)(b), 15(a), 12 and 38(a) and (b) of the *Act*. During mediation, the Police withdrew their claim for exemption pursuant to section 15(a) and 9(1)(b) of the *Act* and released a number of pages to the appellant.

#### ORDER

The decision of the Police was partially upheld.

Some portions of the record contained personal information of the appellant



only. The remaining pages contained the personal information of the appellant and other individuals.

With regard to the personal information of the appellant, section 8(2)(a) applies only to the "Alcohol Influence Test Report" contained in the "Crown Brief". Section 8(2)(a) does not apply to the remaining pages of the "Crown Brief" as neither the brief as a whole nor the individual pages meet the definition of "report". Section 12 does not apply to these pages as the relationship between the Police and the Crown Attorney is not that of solicitor and client. Therefore, to section 38(a) of the *Act* can not apply.

With regard to the portion of the record which contains the personal information of both the appellant and other individuals, section 38(b) of the *Act* introduces the balancing principle. The names, address and statements of individuals other than the appellant are personal information which was compiled as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

The record does not contain any information that pertains to section 14(4). In an unusual case, a combination of circumstances set out in section 14(2) might be so compelling as to outweigh presumption under section 14(3). However, such a case would be extremely unusual. The presumption in section 14(3) has not been rebutted with the exception of one page. The individual whose personal information is contained in this page consented to the disclosure of the information, therefore, the presumption found in section 14(3)(b) does not apply.

#### SECTIONS CONSIDERED

2(1), 38(a) and (b), 8(2)(a), 12

#### PREVIOUS ORDERS CONSIDERED

M-3, M-22, M-5, M-6, M-12, M-2

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### ORDER M-53

APPEALS M-910081, M-910089,  
M-910099, M-910129,  
M-910145, M-910146,  
M-910185, M-910188,  
M-910249

Institution: The Windsor Board of  
Commissioner's of Police

OCTOBER 16, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

record subject to court order • jurisdiction  
of Commissioner

The record at issue in these appeals is an investigation report concerning the Windsor Board of Education which was prepared by the Windsor Police as a result of an investigation conducted in 1989 and 1990.

There are nine appeals, involving four appellants and two requesters, in which disclosure of this record is at issue.

During the course of processing the appeals, the Commissioner's Office was notified by one of the parties of the existence of two orders of the Ontario Court (General Division) which restrict disclosure and dissemination of the record to the parties to a court action and their counsel, to the extent necessary for the preparation for trial.

The sole issue is the effect, if any, of the two court orders on the Commissioner's authority to review the decisions made under the *Act* by the Police.

#### ORDER

The Commissioner ordered that the appeals be discontinued and the appeal files closed.

Persons who are not parties to, but have knowledge of an injunctive order must obey the order. The court orders are injunctive.

The Commissioner's jurisdiction to review the decisions of the Police, which is derived from the *Municipal Freedom of Information and Protection of Privacy Act*, is not effected by the court orders. However, in practical terms, the court orders restrict how the appeals may be processed. To order partial or full disclosure of the record or to refer to the record may well constitute contempt of court. No practical purpose would be served in proceeding with these appeals at this time.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-54

APPEAL M-910401

Institution: The Ottawa Board of  
Commissioner's of Police

OCTOBER 16, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

police records • personal information  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• discretion • purposes of the *Act*

The Police received a request for all information relating to the requester. After notifying two individuals whose personal information might be contained in the record, the Police decided to exercise discretion under section 38(b) and

release the records relating to the two individuals. The two individuals appealed the decision to release the records relating to them.

#### ORDER

The decision of the head was upheld.

Although the presumption raised by section 14(3)(b) applies and disclosure of the information would constitute an unjustified invasion of the privacy of the appellants, section 38(b) gives the Police the discretion to grant or deny access to the requester.

The Police provided representations regarding their exercise of discretion to disclose the information at issue. The Commissioner found nothing to indicate that the exercise of discretion was improper.

Section 38 is a discretionary exemption and even if, as in this case, the disclosure of the information would be an unjustified invasion of another individual's privacy, discretion can be exercised in favour of disclosure. The availability of discretion under section 38 is consistent with one of the purposes of the *Act* which is to provide individuals with a right of access to their own information.

#### SECTIONS CONSIDERED

14(3)(b), 14(4), 14(2), 38(b)

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-55

#### APPEAL M-9200169

Institution: The Dufferin Peel Roman Catholic Separate School Board

OCTOBER 30, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

school records • personal information  
• name • address • presumption of  
• unjustified invasion of • personal privacy  
• deemed not to be presumption against disclosure

The appellant requested access to records related to a stone throwing incident which occurred at a school in Brampton in October 1991.

During the course of the appeal, the appellant narrowed his request to the names and addresses of the child who was alleged to have thrown the stone and the children who are reported to have witnessed the incident. The institution denied access to the information pursuant to section 14 of the *Act*.

#### ORDER

The decision of the head was partially upheld.

The names and addresses of the three children do not fall within any of the types of information listed in section 14(3). Therefore, no presumption of an unjustified invasion of the childrens' personal privacy exists.

None of the parties provided sufficient evidence to establish the requirements of section 14(2)(h), 14(2)(f), 14(2)(g) or 14(2)(i) to the record.

In the circumstances of this appeal, the appellant has established that section 14(2)(d) is a relevant consideration but only with respect to the name of the child who allegedly threw the stone. The appellant has a legal right to add this child as a party to an existing civil action and the child's name is required to do so.

#### SECTIONS CONSIDERED

14(3), 14(2)(d), (f), (g), (h) and (i)

#### PREVIOUS ORDERS CONSIDERED

P-312

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### ORDER M-56

#### APPEAL M-910365

Institution: Toronto Hydro

NOVEMBER 3, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • correspondence  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• deemed not to be presumption against disclosure

The appellant requested access to a copy of correspondence prepared by a named individual relating to the requester. Toronto Hydro denied access to the record pursuant to section 14 of the *Act*. The record is a memorandum prepared by a Manager at Toronto Hydro and discusses the relationship between the requester and her Supervisor.

During the course of the appeal the appellant indicated that she was not interested in receiving any information which relates to another person.

#### ORDER

The institution was ordered to disclose the record with the personal information of the other individual severed.

Toronto Hydro failed to establish a presumed unjustified invasion of personal privacy under section 14(3). The factors listed in section 14(2)(e), (g), (i), (h), (f) are not relevant considerations.

Because the disclosure of the information contained in the record would not constitute an unjustified invasion of the affected person's personal privacy,



section 38(b) of the *Act* does not apply.

#### SECTIONS CONSIDERED

2(1), 14(3), 14(2)(e), (f), (g), (h), (i)

#### PREVIOUS ORDERS CONSIDERED

M-22, M-28

### ORDER M-57

#### APPEAL M-910319

Institution: City of Toronto

NOVEMBER 3, 1992

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • compiled as part of investigation • supplied in confidence  
• presumption of • unjustified invasion of  
• another individual's personal privacy

The City of Toronto received a request for records pertaining to property-related disputes between the requester and the owner of an adjoining property.

Partial access was granted. Access to the remaining information was denied pursuant to sections 12 and 14 of the *Act*. In the course of the appeal, the City withdrew reliance on the section 12 exemption and indicated that the records were being denied under sections 14(1)(f), 14(3)(b) and 38(b) of the *Act*. The appellant agreed to narrow his request to correspondence between the City and the solicitor for the owner of the adjoining property.

#### ORDER

The City's decision was partially upheld.

All of the information contained in the records falls within the definition of personal information under section 2(1) of the *Act* and relates to both the appellant and the owner of the adjoining property. The records do not contain personal information of the solicitor who was acting solely in his capacity as the

representative of the owner of the adjoining property.

The City failed to establish that a presumed unjustified invasion of personal privacy exists under section 14(3) of the *Act*. However, section 14(2)(h) is a relevant factor in the circumstances of this appeal. When a lawyer retained by an individual in relation to by-law matters sends correspondence to an institution in which he discusses his clients position and explores settlement possibilities, it is reasonable to assume that such personal information is supplied implicitly in confidence. Therefore, the disclosure of this type of personal information would constitute an unjustified invasion of the personal privacy of the owner of the adjoining property and the records qualify for exemption under section 38(b) of the *Act*.

Letters sent by the city surveyor, the arbitrator appointed by the City, were not supplied to the City in confidence. Therefore, section 14(2)(h) is not a relevant consideration. As well, none of the other factors under section 14(2) that favour non-disclosure are present. Accordingly, disclosure of this information would not constitute an unjustified invasion of the personal privacy of the owner of the adjoining property and should be disclosed.

Section 38(b) is a discretionary exemption. There is nothing to indicate that the exercise of discretion was improper.

#### SECTIONS CONSIDERED

2(1), 14(3), 14(2)(f), (h), (i)

#### PREVIOUS ORDERS CONSIDERED

M-22, M-28

### ORDER M-58

#### APPEAL M-910243

Institution: London Board of Commissioners of Police

NOVEMBER 6, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

wiretap application • refusal to confirm or deny existence of record • discretion

The Police received a request for access to an investigation file, including the names of the Officers participating in the investigation as well as the names of people questioned and the use of any covert techniques (i.e. electronics surveillance). The Police responded by advising the requester that the existence of any records could neither be confirmed nor denied in accordance with section 8(3) of the *Act*.

#### ORDER

The doctrine of federal legislative paramountcy operates to exclude requests for wiretap application records from the scope of the *Municipal Act*. Non-wiretap investigation records do not exist.

The representations provided by the Police, as they relate to non-wiretap investigation records, contain what could be best described as generalized references to possible interference with the investigative process. The Police do not provide details as to how disclosure of the existence of non-wiretap investigative records would "frustrate" an ongoing investigation, either in the abstract or, more importantly, in the particular circumstances of this appeal. Therefore, the Police have not established that any of the circumstances enumerated in sections 8(1) or (2) exist in the circumstances of the appellant's request and section 8(3) of the *Act* does not apply.

SECTIONS CONSIDERED

8(3), 38(a)

PREVIOUS ORDERS CONSIDERED

P-344, P-255

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**ORDER M-59**

**APPEAL M-910244**

Institution: City of Peterborough

NOVEMBER 6, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

solicitor client privilege • in contemplation of or for use • in litigation • in giving legal advice • purposes of the Act • jurisdiction of Commissioner • powers and duties of Commissioner • law enforcement • custody or control

The appellant requested a copy of the entire correspondence and inspection files and any other correspondence in possession of the Fire Department regarding a named address, including the dates and times that a named Fire Prevention Officer inspected and visited the address.

The City responded by releasing 14 records. The requester was not satisfied with this response and appealed the City's decision, claiming that additional response of records should exist.

The City issued a second decision letter denying access to the records pursuant to section 8 and section 12. The City also refused to confirm or deny the existence of additional records.

During the course of the appeal the City withdrew its reliance on section 8(3) and agreed to release additional records. The scope of the appeal was narrowed to only one of the 22 records originally identified by the City. The only exemption claimed by the City with respect to this one record was section 12 of the *Act*.

However, the appellant continued to maintain additional records existed. That records such as Fire Prevention Officer's notes and diary entries should have been identified as responsive to his request. The City took the position that the Fire Prevention Officer's notes and diary entries do exist but they are neither responsive to the appellants request nor in the City's custody and/or control. The City also maintained that additional records identified by the appellant could not be located and asked for an opportunity to present "viva voce" evidence on the issues of the notes and diary entries as well as the possible existence of additional records. The City also submitted that the Information and Privacy Commissioner did not have jurisdiction to deal with "law enforcement documents".

**ORDER**

The City was ordered to disclose the one record at issue to the appellant. The City was also ordered to provide the appellant with the proper decision letter regarding access to the notes and diary entries of the Fire Prevention Officer. The City was also ordered to provide affidavit evidence attesting to the records which were released to the appellant during the course of responding to his request and appeal and the nature of the search is conducted to determine whether additional responsive records exist.

The one record at issue does not qualify for exemption under the second part of the section 12 exemption as it clearly has not been used in giving legal advice or in contemplation of litigation.

Section 8 of the *Municipal Act* deals with so called "law enforcement" records. In general, this section provides institutions with discretion to exempt a record if the matter which generated the record satisfies the definition of the term "law enforcement" found in section 2(1) of the

*Act* and the requirements of one of the enumerated situations outlined in sections 8(1) or (2) is present. If a record has been exempted by an institution under section 8 and the institution has exercised its discretion not to disclose the record, the requester has the right to appeal that decision to the Commissioner. Because the City provided detailed written representations outlining why it believes that the notes and diary entries the Fire Prevention Officers are not in its custody and control, it was not necessary to hear oral representations on this issue.

The most appropriate method of addressing the issue of additional records is for the City to provide an affidavit by the head or a delegate of the head attesting to the records released to the appellant during the course of responding to his request and appeal and to the search is undertaken by the City in order to determine whether any additional responsive records exist. This is the normal procedure followed by the Commissioner's Office in dealing with issues relating to adequacy of searches for records. Once the affidavit is received, the Assistant Commissioner will determine whether the affidavit is adequate and whether oral representations are necessary.

The notes and diary entries of the Fire Prevention Officers are clearly related to their employment responsibilities and are properly considered to be in the custody or under the control of the City. These records relate to the properties being inspected by the Officers and clearly would only have been created as part of the Officers employment related responsibilities.



**SECTIONS CONSIDERED**

12, 8, 4(1)

**PREVIOUS ORDERS CONSIDERED**

M-2, M-11, M-19, Order 210, 120,  
P-326

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**ORDER M-60**  
**APPEAL M-9200132**

Institution: York Regional Police

NOVEMBER 6, 1992

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

police records • reasonable steps to locate  
record • record does not exist

The appellant requested access to records relating to a meeting that was held at the requester's residence in June of 1989 between the requester, two named Police Officers and other individuals. The Police advised the requester that a record of the meeting did not exist in its custody or control.

**ORDER**

The search conducted by the Police was reasonable in the circumstances of this appeal.

The Police indicated that two Police Officers did attend the meeting, however, at the time of the request, no record of the meeting could be found. The Police have taken all reasonable steps to locate any record that would specifically respond to the appellant's request.

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**ORDER M-61**  
**APPEAL M-910301**

Institution: The Town of Westminster

NOVEMBER 10, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

advice to government • public interest  
override • burden of proof • solicitor client  
privilege

The Town received a request for a copy of a report dated March 25, 1991 prepared by Huron Middlesex Engineering Limited. The Town granted partial access to the record. The Town cited sections 7(1), advice to government, and 12, solicitor-client privilege, to exempt information which was severed from the record.

**ORDER**

The Town's decision was partially upheld.

All of the severances except one sentence do not satisfy the requirements for exemption under section 7(1) of the *Act*. None of the exceptions listed in section 7(2) apply to this sentence which qualifies for exemption under section 7(1).

The Commissioner reviewed the record with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption found in section 7. In the circumstances of this appeal, the Commissioner was not convinced that a compelling public interest in the disclosure of the one sentence exists.

The section 12 exemption does not apply to the severances made to the record. The record is not a communication between a client and a legal advisor and there is no evidence to indicate that it was a confidential nature. The Town has failed to establish that the record was "created or obtained especially for a lawyers brief". The town also failed to provide any evidence to substantiate its claim that the engineer status report was prepared for counsel.

**SECTIONS CONSIDERED**

7(1), 16, 12

**PREVIOUS ORDERS CONSIDERED**

M-40, M-2

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**ORDER M-62**  
**APPEAL M-9200101,**  
**M-9200125**

Institution: The Hamilton Wentworth  
Regional Police

NOVEMBER 12, 1992

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

police records • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy

The Police received a request for access to records relating to criminal charges that had been laid by the Police against two named individuals. The Police notified the two individuals that they were considering releasing some of the requested information. Although both individuals objected to the release of any personal information that relates to them, the Police decided to release to the requester certain information contained in the records. The two individuals appealed the Police's decision to grant access. The information at issue is contained in records entitled "Case Envelope", "Instruction for Crown Counsel", "Court Information" and in two Police Officers notebooks.

**ORDER**

The Police were ordered not to disclose the records.

The information contained in the records falls within the definition of personal information and relates only to the appellants.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. The requirements for

a presumed unjustified invasion of the personal privacy of the appellant has been satisfied under section 14(3)(b). The records at issue in this appeal do not contain information relevant to section 14(4). A combination of listed in section 14(2) and/or unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 14(3). However, such a case would be extremely unusual. The Police did not provide any representations which would support the disclosure of the information. Therefore, the disclosure of the records would constitute an unjustified invasion of the personal privacy of the appellant.

#### SECTIONS CONSIDERED

2(1), 14

#### PREVIOUS ORDERS CONSIDERED

None

### ORDER M-63

#### APPEAL M-9200279

Institution: The Ottawa Board of Commissioners of Police

NOVEMBER 12, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

police records • investigation report  
• personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • another individual's personal privacy • discretion

The Police received a request for access to a Police investigation report. The Police notified an individual whose interests might be affected by the release of the report and after receiving representations from this person, decided to grant partial access to the requester. The individual who had been notified appealed the decision to grant partial access.

#### ORDER

The decision of the Police to provide partial access was upheld.

Because parts of the record do not contain personal information and no other exemptions were claimed, these parts should be released to the requester. Some parts of the remaining information contain the personal information of the requester only while other parts contain the personal information of both the requester and the appellant.

Because part of the record contains the personal information of the requester only, disclosure of this information cannot constitute an unjustified invasion of the appellant's personal privacy and section 38(b) does not apply. These parts of the record should be released to the requester.

Section 38(b) introduces the balancing principle with regards to those portions of the record which contain the personal information of both the requester and the appellant. The requirements for a presumed unjustified invasion of the appellant's personal privacy under section 14(3)(b) have been established. The records do not contain any information that pertains to section 14(4). Section 14(2)(d) alone, which was raised by the requester, is not sufficient to rebut the presumption in section 14(3)(b). However, section 38(b) is a discretionary exemption which gives the Police discretion to grant access to a record even if doing so would constitute an unjustified invasion of another individual's personal privacy. This is what the Police have chosen to do in this case and is nothing to indicate that the exercise of discretion was improper.

#### SECTIONS CONSIDERED

2(1), 38(b)

#### PREVIOUS ORDERS CONSIDERED

M-22, M-28, M-54

### ORDER M-64

#### APPEAL M-9200047

Institution: The Corporation of the Town of Sault Look Out

NOVEMBER 17, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • meeting • absence of public • substance of deliberations

The Town received a request for access to a copy of a complete report submitted to town council by a named individual. The Town denied access to the record claiming sections 6(1)(b) of the *Act*. During the course of the appeal, the Town added section 14 as a new exemption with respect to certain portions of the record.

#### ORDER

The Town's decision was upheld.

In order to qualify for exemption under section 6(1)(b), the Town must establish that (1) a meeting of a council, board, commission or other body or a committee of one of them took place; and (2) that a statute authorizes the holding of this meeting in the absence of the public; and (3) that disclosure of the record at issue would reveal the actual substance of deliberations of this meeting.

A meeting of the committee of the whole Town Council was held on December 4, 1991. Section 55(1) of the *Municipal Act* authorizes the committee of the whole to meet in camera. The Town has provided sufficient evidence to establish that disclosure of the record would reveal the actual substance of deliberations of this



in camera meeting, in the circumstances of this case. Because no evidence was provided to indicate that the subject matter of the record had been considered in a meeting open to the public, section 6(2)(b) did not apply. Because the record contains the appellants personal information section 38(a) provides the town with discretion to refuse to disclose to the appellant his own personal information where section 6 applies. The Assistant Commissioner reviewed the Town's reasons for exercising its discretion in favour of denying access to the record and found nothing improper in the circumstances of this appeal.

#### SECTIONS CONSIDERED

2(1), 6(1)(a), 6(1)(b), 38(a)

#### PREVIOUS ORDERS CONSIDERED

None

### ORDER M-65

#### APPEAL M-910360

Institution: Halton Board of Education

NOVEMBER 19, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

third party information • trade secret  
• commercial • "supplied" • "in confidence" • reasonable expectation of  
• harm • competitive position

The Board received a request for access to a proposal that was developed in conjunction with Apple Canada for an advanced technology secondary school. The Board denied access to the record pursuant to section 10(1)(a) of the *Act*.

#### ORDER

The Board was ordered to disclose the records to the appellant.

The records are a four page record which outlines the conceptual framework for the development of a possible project and

a one page "letter of intent" signed by representatives of the Board and Apple Canada. In its representations, Apple Canada indicated it was willing to release the letter of intent.

The information contained in the records does not qualify as trade secrets. The connection between the information contained in the records and the commercial activities of Apple Canada is too remote to qualify the information as commercial. Therefore, the information contained in the records does not qualify as any of the types of information identified in section 10(1).

The information contained in the records was a result of negotiations between the Board and Apple Canada. Various information may have been supplied by Apple Canada to the Board during the course of negotiations. Because it is not possible to distinguish which portion of the record reveals information that was supplied to the Board, which information is that of the Board and which information reflects an amalgam of the position of both parties, the records were not "supplied" as is required by section 10(1).

There is no evidence to establish a reasonable expectation of significant prejudice to its competitive position if the letter of intent is disclosed. Neither the Board nor Apple Canada have provided sufficient evidence to establish a reasonable expectation of significant prejudice to Apple Canada's competitive position should the other record be released. Therefore, neither of the two records meets the test for exemption under section 10(1)(a) of the *Act* and they do not qualify for exemption.

#### SECTIONS CONSIDERED

10(1)(a)

#### PREVIOUS ORDERS CONSIDERED

M-29, 36, M-10

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*\*An application for judicial review has been brought in respect of each of the following orders: P-345 (Fall Precip), P-352, P-359, P-363, P-373 and M-52.*

*Applications for judicial review in respect to Orders 162, 215 and 216 have been dismissed. Applications for judicial review in respect to Orders M-26 and P-239 have been abandoned.*

## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1992 TO DATE *	1991 TO DATE *	1991 TOTAL
Provincial	505	378	458
Municipal	350	316	394
Total	855	694	852

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1992 TO DATE *	1991 TO DATE *	1991 TOTAL
Provincial	517	293	437
Municipal	309	115	179
Total	826	408	616

METHOD OF CLOSING ACTIVE APPEAL FILES 1992 TO DATE		
	BY ORDER	OTHER THAN BY ORDER
Provincial	103	414
Municipal	42	267
Total	145	681

Numbers are subject to change

\* January 1 - September 30



## HIGHLIGHTS OF COMPLIANCE INVESTIGATIONS

These highlights are prepared for the purpose of convenience only. Complete texts of compliance investigations are not currently available to the general public. Please note: investigation numbers are marked "P" to denote provincial investigations and "M" to denote municipal investigations.

### INVESTIGATION I91-90P

Institution: Ministry of the Solicitor General  
SEPTEMBER 23, 1992  
(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

The Ontario Provincial Police (the OPP) investigated a house fire and took photographs of the fire scene. Later, the OPP gave copies of the photographs to an insurance investigator. The owner of the house complained that his privacy was breached because the OPP disclosed his personal information when they talked to the investigator and gave him copies of the photographs.

#### CONCLUSION

The IPC found that the OPP had used the photographs to explain the fire to the investigator.

The IPC concluded that the discussions about the fire and the photographs of the fire scene were not "recorded information about an identifiable individual". Therefore, they were not the house owner's "personal information" as defined in section 2(1) of the *Act*.

Since the information was not personal information, the privacy provisions of Part III of the *Act* did not apply. The IPC concluded that the OPP did not disclose

information contrary to Part III of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42

#### STATUTES CONSIDERED

Ontario Provincial Police Orders, Part 4,  
Section 244.1

### INVESTIGATION I92-06P

Institution: Ministry of Community and  
Social Services  
OCTOBER 13, 1992  
(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

An employee of an institute of the Ministry complained that on two separate occasions, the institute had improperly disclosed his personal information as follows:

1. The complainant had frequently been absent from work. He had voluntarily provided letters from two psychiatrists and a psychologist to explain his absences. Later, the institute asked the complainant to submit to a mandatory medical exam under the terms of his collective agreement. The institute forwarded copies of the letters to the physician selected to do the exam.

2. The complainant had filed a workers' compensation claim for benefits. At the Workers' Compensation Board (WCB) hearing into his claim, a Human Resources Manager at the institute, testifying under oath, disclosed medical information about him.

#### CONCLUSIONS

1. The complainant had given the letters to explain his frequent absences. Later, he was required to undergo a mandatory medical exam because of these absences.

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

A Board of Education, I91-70M, I92-32M,  
I92-38M  
A City, I92-33M, I92-54M  
Ministry of Community and Social  
Services, I92-42P, I92-06P  
Ministry of the Solicitor General, I91-90P,  
I92-46P  
Ontario Insurance Commission, I92-23P  
Ontario Lottery Corp. I92-12P  
A Police Force, I92-65M  
A Public Utilities Commission, I92-02M  
A Regional Municipality, I92-13M  
A Town, I91-43M

In forwarding copies of the letters to the examining doctor, the institute disclosed personal information for a purpose consistent with the purpose for which the information had been obtained and one which the complainant could have reasonably expected. Thus, the disclosure was in accordance with sections 42(c) and 43 of the *Act*.

2. The Human Resources Manager disclosed the complainant's medical information at a WCB tribunal. The IPC determined that the WCB has the statutory power to compel a witness to testify at a WCB hearing. Section 64(2) of the *Act* states that the *Act* does not affect this power. Therefore, the disclosure of the complainant's medical information was permitted under the provisions of the *Act*.

Other matters:

During the course of the investigation, the IPC found that the institute had collected personal information without giving notice as required by the *Act*.

The IPC recommended that when the institute collected personal information, it should ensure that proper notice was given.

In reply, the institute stated that it would ensure that its policies and practices on giving notices when personal information was collected, would be reviewed, revised where appropriate and widely distributed to its staff.

#### SECTIONS CONSIDERED

Sections 2(1), 32, 64(2)

#### STATUTES CONSIDERED

*The Workers' Compensation Act*

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### INVESTIGATION I92-12P

Institution: The Ontario Lottery Corporation

SEPTEMBER 8, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • collect • use

The IPC learned that the Ontario Lottery Corporation (OLC) was collecting and using Social Insurance (SIN) and Ontario Health Card numbers to verify the identity of prize winners who redeemed their tickets in person at the OLC's prize offices.

#### CONCLUSION

The IPC examined the respective federal and provincial legislation governing the collection and use of the SIN and Health Card Number. It determined that the OLC had no legal authority to collect or use either number in its prize redemption process. This practice was an infringement of the privacy provisions of the *Act*.

#### RECOMMENDATION

The IPC brought this matter to the attention of the OLC with a recommendation that it consider changing its procedures so as to comply with the *Act*.

The OLC responded positively to the recommendation by deciding that its prize offices would no longer accept So-

cial Insurance and Ontario Health Card numbers when redeeming winning tickets.

#### SECTIONS CONSIDERED

2(1), 41 and 42

#### STATUTES CONSIDERED

*Health Cards and Numbers Control Act*,  
*Ontario Lottery Corporation Act* and the  
*Income Tax Act*

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### INVESTIGATION I92-23P

Institution: Ontario Insurance Commission

OCTOBER 15, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

An individual was not satisfied with how her insurance company had handled her claim. She complained to the Office of the Superintendent of Insurance about it. She next complained to the Ontario Insurance Commission (OIC) about how the Superintendent of Insurance had handled her complaint.

The OIC investigated her complaints, wrote a report, (the OIC report) and sent a copy of it to a private actuarial firm. The individual found out that the OIC had given a copy of the OIC report to the actuarial firm. She believed that her medical records had also been given to the firm. She complained that her privacy had been breached because the OIC report and the medical records had been given to the firm without her knowledge or consent.

#### CONCLUSION

The IPC found that the OIC had not given the complainant's medical records to the actuarial firm. The IPC also found that the OIC had changed the complainant's name to "Jane Doe" in the OIC report before giving it to the firm.

The IPC concluded that the OIC report did not contain "recorded information about an identifiable individual". Therefore, the report did not contain "personal information" as defined in section 2(1) of the *Act*. Since the information was not personal information, the privacy provisions of Part III of the *Act* did not apply. The IPC concluded that the OIC did not disclose information contrary to Part III of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I92-42P

Institution: Ministry of Community and Social Services

AUGUST 24, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclosure

A constituent contacted her MPP for help in completing a Ministry form for financial assistance. The MPP's office contacted the Ministry for clarification.

The constituent complained to the IPC that the Ministry had disclosed her financial information to the MPP's office, in contravention of the *Act*.

#### CONCLUSION

The IPC found that in response to the MPP's enquiry, the Ministry disclosed that the constituent's income was in excess of that needed to qualify for financial assistance. The IPC concluded that this disclosure was in accordance with section 42(j) of the *Act*, which permits disclosure where a constituent has authorized an MPP to make enquiries on the constituent's behalf.

#### SECTIONS CONSIDERED

2(1), 42(j)



## INVESTIGATION I92-46P

Institution: Ministry of the Solicitor General

OCTOBER 13, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

### KEYWORDS

personinfo • disclose

The Clerk-Administrator of a Township asked the Ontario Provincial Police (the OPP) to patrol the Township administration office, during an evening meeting of the Township Council. Some time later, the OPP received a request, under the *Act*. The requester asked for details of the Township's request for OPP assistance, including the name of the person who had made the request. The OPP responded to the request, by releasing the name of the Clerk-Administrator and details of her request for OPP assistance. The Clerk-Administrator complained that the OPP had wrongly disclosed her name.

### CONCLUSION

The IPC found that when the complainant had asked the OPP for assistance, she had done so in her capacity as the Clerk-Administrator. The IPC, therefore, concluded that the information released did not constitute the complainant's "personal information", as that term is defined in section 2(1) of the *Act*, because it was information relating to the complainant in her work-related capacity. Therefore, Part III of the *Act* did not apply. On this basis, the IPC found that the Ministry had not disclosed information contrary to Part III of the *Act*.

### SECTIONS CONSIDERED

2(1), 42

## INVESTIGATION I91-43M

Institution: A Town

SEPTEMBER 11, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose • use

The Town received 38 access requests, over a period of several months. The complainant had filed ten of them. To account for the amount of time that processing these requests was requiring, the Town's Freedom of Information and Privacy Co-ordinator sent a memo to the Town's Mayor and members of council. The Co-ordinator had attached to his memo each of the 38 access requests, and his responses to them. Some time later, the same complainant started a court action against one of the Town's councillors. The councillor's lawyer tried to introduce the Co-ordinator's memo and the complainant's access requests as evidence in that court proceeding.

The complainant complained that the Town had wrongly disclosed his access requests to the Mayor and members of council and to the Court.

### CONCLUSION

The IPC found that the complainant's access requests contained his "personal information", as defined in section 2(1) of the *Act*.

The IPC also found that the Town was not permitted to disclose the complainant's access requests to the Mayor and members of council, under section 32 of the *Act*.

The IPC further concluded that the Mayor and members of council did not need to know the identity of the requesters in order to understand how long it was taking to process these access re-

quests. Thus, the IPC found that the Town did not comply with section 3(2) of Ontario Regulation 517/90, which requires that only those individuals who need a record in the performance of their duties shall have access to it.

The IPC determined that the presentation of the memo and the complainant's access requests to the Court was a "use" instead of a "disclosure", under the *Act*. The IPC found that section 31 of the *Act*, which addresses "use", did not apply in this case, because the memo and the complainant's access requests were used not by the Town, but rather, by the councillor who, by virtue of his role as councillor, was distinct from the Town.

### RECOMMENDATION

The IPC recommended that the Town not disclose any "personal information", as defined in section 2(1) of the *Act*, unless permitted by section 32 of the *Act*.

### SECTIONS CONSIDERED

2(1), 31, 32 and 3(2) of Ontario Regulation 517/90

### STATUTES CONSIDERED

*Municipal Act*

## INVESTIGATION I91-70M

Institution: A Board of Education

AUGUST 31, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

At a public school board meeting, the Board dismissed a teacher for sexual misconduct with students. One day later, the police laid criminal charges against the teacher. The teacher filed a grievance about his dismissal. Step 3 of the grievance procedure required a hearing before the Board. The Board held a second public meeting at which it denied his step

3 grievance. The information disclosed in both meetings was recorded in minutes available to the public. The teacher complained that the Board had disclosed his personal information.

The Board stated that it had disclosed the complainant's personal information pursuant to section 32(e) of the *Act*. Section 32(e) states that an institution shall not disclose personal information except for the purpose of complying with an act of the Legislature. In relying on this section, the Board referred the IPC to the *Education Act*.

The IPC reviewed the relevant sections of the *Education Act*. The IPC concluded that the Board could not rely on section 32(e) of the *Act* because the word "complying" in section 32(e) of the *Act* indicates that the statute in question must be mandatory in nature. In other words, in order for section 32(e) to apply here, the *Education Act* must impose a duty on the Board to disclose the information. A provision which grants an institution the discretion to disclose personal information would not be sufficient for section 32(e) of the *Act* to apply.

#### CONCLUSION

The IPC concluded that the Board had not complied with the privacy provisions of Part II of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Board not discuss personal information in open meetings.

#### STATUTES CONSIDERED

*Education Act*

#### SECTIONS CONSIDERED

2(1), 32

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## INVESTIGATION I92-02M

Institution: A Public Utilities Commission

SEPTEMBER 17, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose • salary

The chairman of the Commission had written a letter to a local newspaper. In this letter, the chairman had identified the complainant, an employee of the Commission, together with the amount of his employment income. The newspaper published this letter. The complainant was of the view that the chairman had improperly disclosed his personal information.

#### CONCLUSION

The IPC determined that the complainant's specific earnings had been disclosed by the chairman of the Commission to the newspaper. Since none of the circumstances which permits disclosure of personal information as outlined in section 32 of the *Act* applied in this case, this disclosure was contrary to the *Act*.

#### RECOMMENDATION

The IPC recommended that the Commission take precautions to ensure that in the future all disclosures of personal information complied with the *Act*.

#### SECTIONS CONSIDERED

2(1), 32

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## INVESTIGATION I92-13M

Institution: A Regional Municipality

SEPTEMBER 10, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

An individual was taking part in the Municipality's parental support program. The program's files contained her telephone number. Her program worker gave this number to another person in the program, without the individual's consent. She complained that this was a breach of her privacy and contrary to the *Act*.

#### CONCLUSION

The IPC found that the complainant had not consented to having her program worker disclose her telephone number to another person in the program. She had not identified this telephone number in particular or consented to it being given out, though her program worker assumed that she had.

The Municipality stated that it was permitted to disclose the telephone number under section 32(c) of the *Act*, which allows a disclosure that is consistent with the purpose for which the information was obtained. However, the IPC found that disclosing the telephone number was not permitted under section 32(c) of the *Act* because the Municipality obtained the telephone number so that the complainant's program worker could contact her during the course of her involvement with the parental support program, not so that he could give it to others. Consequently, the disclosure of the telephone number was contrary to the *Act*.

#### RECOMMENDATION

The IPC recommended that the Municipality ensure that its staff are aware of the disclosure provisions in the *Act*.

#### SECTIONS CONSIDERED

2(1), 32



## INVESTIGATION I92-32M

Institution: A Board of Education

OCTOBER 15, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose

Four individuals complained that the School Board, their employer, had improperly disclosed information about their employment income. According to the complainants, disclosures were made as follows: (1) two different newspapers on two separate dates reported that a school trustee had disclosed information concerning the specific salaries of the individuals; (2) in another newspaper article, unspecified sources disclosed the average percentage salary increase received by the complainants, and (3) in a fourth article, another school trustee commented on the complainants' decision not to take a rollback in their salaries.

### CONCLUSION

(1) In reply to the IPC inquiry on the first two disclosures, the school trustee denied that she had disclosed any information concerning the complainants' income. The IPC, therefore, could only conclude that if the school trustee had, in fact, disclosed the information, then it was disclosed contrary to section 32 of the *Act* which outlines the circumstances permitting disclosure.

With respect to the other disclosures, the IPC concluded that:

(2) An average percentage salary increase could not be considered to be the specific information of any identifiable individual and therefore, this information was not "personal information" as defined in the *Act*.

(3) Since it appeared that the School

Board did not have a record of the complainants' decision not to take a rollback in their salaries, this information was not recorded information and, therefore, was also not "personal information" as defined in the *Act*.

### RECOMMENDATION

The IPC recommended that the School Board remind all school trustees of the requirements of the *Act* with respect to the disclosure of personal information. The School Board followed the recommendation.

### SECTIONS CONSIDERED

2(1), 32

## INVESTIGATION I92-33M

Institution: A City

SEPTEMBER 8, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

### KEYWORDS

personinfo • collect

The City was collecting medical information from its employees via long-term disability forms (forms). The City then forwarded the forms to the insuring agency. An employee complained that this breached employees' privacy, in contravention of the *Act*.

### CONCLUSION

The IPC determined that the insuring agency paid disability benefits directly to the employees concerned. The City could not provide any authority to collect the forms. The City agreed to stop this practice, and to destroy all copies of the forms held on file.

The City's co-operation facilitated early settlement of this complaint.

### RECOMMENDATION

The IPC recommended that the City:

- immediately stop collecting the forms from its employees;
- provide written notice to employees to deal directly with the insuring agent; and
- provide written notice to employees that all forms currently in their possession will shortly be destroyed.

### SECTIONS CONSIDERED

Section 28

## INVESTIGATION I92-38M

Institution: A Board of Education

SEPTEMBER 3, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • collect • disclose

A teacher had a medical problem that affected her work. The school principal wrote several memos about the teacher and later passed them on to his supervisor. The memos were also passed on to some other employees and the Board's doctor. The teacher complained that her privacy was breached because she had told the principal about her medical problem in confidence. She also believed her privacy was breached because the memos were collected without her knowledge or consent and then passed on to others.

### CONCLUSION

The IPC found that the memos had been collected by the principal and passed on to others in 1989. Since this happened before the *Act* came into effect, the complaint fell outside the Commissioner's jurisdiction.

### SECTIONS CONSIDERED

2(1), 29, 32

## INVESTIGATION I92-54M

Institution: A City

SEPTEMBER 25, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

### KEYWORDS

personinfo • disclose

Two individuals had written a letter to the City complaining about debris on a neighbouring property. At a public meeting of the City's sub-committee that dealt with this type of complaint, the individuals' names, addresses and the fact that they had written a letter of complaint was disclosed. The two individuals complained to the IPC that the City had disclosed their personal information at a public meeting.

### CONCLUSION

The IPC determined that the City had disclosed the complainants' name and address at the meeting and that the City had written to the complainants apologizing for accidentally disclosing their names.

### RECOMMENDATION

The IPC advised the City to exercise greater caution when handling communications from the public in similar circumstances.

### SECTIONS CONSIDERED

2(1), 32

## INVESTIGATION I92-65M

Institution: A Police Force

OCTOBER 23, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

### KEYWORDS

personinfo • retention

A former employee of the Police Force found out that the Force still had his fingerprints and photograph on file, more than one year after he had left. He asked the IPC if this contravened the *Act*.

The complainant also complained to the Force, asking them to delete his personal records from all data bases and record storage.

### CONCLUSION

Prior to our investigation, the complainant received a satisfactory response from the Police Force concerning the data bases and record storage. His one remaining concern was whether the retention of his fingerprints and photograph on microfilm complied with the *Act*.

The IPC reviewed the Police Force's retention schedules, and determined that retention of the records on microfilm complied with Ontario Regulation 517/90 of the *Act*. The Regulation specifies only a minimum retention period, not a maximum period.

### SECTIONS CONSIDERED

2(1) and Ontario Regulation 517/90



## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1992 TO DATE *	1991 TO DATE *	1991 TOTAL
Provincial	61	76	94
Municipal	69	57	70
Total	130	133	164

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1992 TO DATE *	1991 TO DATE *	1991 TOTAL
Provincial	81	53	68
Municipal	77	27	32
Total	158	80	100

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1992 YEAR TO DATE *		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	8	8
Retention	4	8
Use	1	2
Disclosure	66	57
Access	2	1
Privacy	0	1

Numbers are subject to change

\* January 1 - September 30

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HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## HIGHLIGHTS OF ORDERS

These highlights are prepared for the purposes of convenience only. For accurate reference, refer to the official orders of the Information and Privacy Commissioner, available from Publications Ontario at 1-800-668-9938. Please note: Orders are marked Order No. "P" to denote provincial orders and Order No. "M" to denote municipal orders. Keywords are general subject categories which represent the issues discussed in the orders.

## INTERIM ORDER P-378 APPEALS P-9200378, P-9200384, P-9200387 AND P-9200413

Institution: Ministry of Community and  
Social Services

DECEMBER 8, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

*Young Offenders Act* • *Juvenile Delinquents Act* • law enforcement • federal legislative paramountcy • custody or control  
• Commissioner • powers and duties  
• jurisdiction • purposes of the *Act*

The Ministry received four requests for records relating to wards during their stay at Grandview Training School for Girls. Three of the requests were made by the wards themselves and the fourth was made by an individual who sought access to personal information about himself and a ward. The Ministry denied access to the wards under section 14(1)(b) of the *Act*. The Ministry in-

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formed the individual that any records containing his personal information were destroyed in accordance with the institution's retention schedule and that access to records containing the personal information of the wards was denied pursuant to sections 45(1)(e) and (f) of the *Young Offenders Act* (the *YOA*). Each of the four requesters appealed the Ministry's decision to deny access.

### ORDER

The Ministry was ordered to provide a detailed affidavit, sworn by an official of the Ministry, relating each record to the provisions of the *YOA* and demonstrating how the required elements of each provision are satisfied.

The Ministry refused to provide the Commissioner's Office with a copy of the records for all four appeals, claiming that to do so would offend the disclosure provisions of the *YOA*.

The *YOA* contains a number of provisions relating to the keeping and disclosure of records. Where valid federal legislation is inconsistent with or conflicts with valid provincial legislation, the federal legislation prevails to the extent of the inconsistency or conflict. The inconsistency must amount to an "express contradiction". There is an expressed contradiction between the disclosure provisions of the *Act* and the *YOA*. Section 45(1) of the *YOA* states that, in certain circumstances, a record kept pursuant to section 43 of that statute may not be made available for inspection under section 44.1, except where the record is in the custody or control of the national archivist or an archivist for any province, or by way of an application to a youth court judge.

There is also an express contradiction between the two statutes as it relates to the Commissioner's right to require production of records for consideration during the course of an appeal. Sections 46(1) and 43 of the *YOA* clearly conflict with section 52(4) of the *Act*. Therefore, there is an expressed contradiction between the disclosure scheme contained in the *YOA* and the disclosure scheme in the *Act* and, in accordance with the doctrine of federal legislative paramountcy, the *YOA* prevails in respect to records kept by a provincial institution pursuant to section 43 of the *YOA*. Because section 45(6) of the *YOA* provides that records relating to the offence of delinquency under the *Juvenile Delinquency Act* (the *JDA*) fall under the *YOA*, the records relating to the offence of delinquency also fall outside the scope of the *Act*.

However, the Information and Privacy Commissioner has both the jurisdiction and the statutory obligation to determine whether the *Act* applies to records in the custody or under the control of

any institution covered by the *Act*. The Commissioner must assess, as best he can, that records are not improperly withheld from scrutiny under the *Act* on the basis that they are "*YOA* records" when, in fact, this may not be the case.

Section 45 of the *YOA*, by operation of section 45(6), applies in respect of all records relating to the offence of delinquency under the *JDA* and makes no distinction as to when the records are created. As long as the records relate to the offence of delinquency under the *JDA*, they fall under the scope of the *YOA*, regardless of whether the records were created before or after the wards were committed to Grandview. Section 46 of the *YOA* makes it an offence to disclose any such records or any information contained in them to any person "... where to do so would serve to identify the young person to whom it relates as a young person dealt with under [the *YOA*]" . This provision applies whether or not the person requesting the records or the person to whom the records are to be disclosed is aware that the person to whom the information relates is a young person dealt with under the *YOA*.

Section 45 of the *YOA* does not permit the disclosure by the Ministry of records relating to the offence of delinquency to the Information and Privacy Commissioner, in the absence of an order of a Youth Court Judge.

The Assistant Commissioner was not satisfied that the records which are the subject matter of the four requests "relate to the offence of delinquency" under the *JDA* and, therefore, fall within the scope of the *YOA* and outside the jurisdiction of the *Act*. In order to qualify for consideration as *YOA* records, the records identified by the Ministry as being responsive to the request must relate to the offence of delinquency or disclose information

which would serve to identify someone as the person dealt with under the *YOA* or the *JDA*.

#### SECTIONS CONSIDERED

14, 67, 52(4)

#### OTHER STATUTES CONSIDERED

*The Juvenile Delinquents Act, The Young Offenders Act*

#### PREVIOUS ORDERS CONSIDERED

P-344

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### ORDER P-379

#### APPEAL P-9200527

Institution: The Ministry of Health

DECEMBER 10, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

solicitor-client privilege

The Ministry received a request for access to three specified records. The Ministry granted partial access to each record with severances made pursuant to sections 14(1)(b), 19 and 21(1) of the *Act*. During mediation, the appellant agreed not to pursue access to the record for which section 21(1) was claimed. In addition, the Ministry agreed to grant access to the record for which section 14(1)(b) was claimed. The record remaining at issue is a paragraph of a memorandum from the Assistant Director of the Ministry Psychiatric Hospitals Branch to the Administrator and the Assistant Administrator of the Penetanguishene Mental Health Centre.

#### ORDER

The Ministry was ordered to disclose the record.

The record is not a communication between a client (or his agent) and a legal advisor: none of the parties to the communication are legal counsel. There-



fore, the record does not qualify under the first part of Branch one of the section 19 exemption (common law solicitor-client privilege).

The record was not created or obtained especially for a lawyer's brief for existing or contemplated litigation but rather to communicate information between Ministry's administration staff. Therefore, the record does not qualify under the second part of Branch one of the exemption (litigation privilege) and section 19 of the *Act* does not apply to the record.

#### SECTIONS CONSIDERED

19

#### PREVIOUS ORDERS CONSIDERED

49

### ORDER P-380\* APPEAL 920150

Institution: The Teachers' Pension Plan Board

DECEMBER 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

employment information • salaries  
• benefits • economic or other interests  
• personal information • unjustified  
invasion of • personal privacy

The Board received a request for access to information respecting the salary and benefits of its Chief Executive Officer (the CEO), and Senior Vice President of Investments (the Senior VP). The request was subsequently modified to include only salary ranges for these positions, provided that the salary ranges were not excessively broad. The Board denied access to the salary ranges and benefits pursuant to sections 21(1) and 18(1)(c) of the *Act*.

#### ORDER

The Board was ordered to disclose the portions of the record which contain the salary ranges and benefits entitlements of the CEO and the Senior VP.

In order to qualify for exemption under section 18(1)(c), the Board must provide detailed and convincing evidence that disclosure of the information contained in the records could reasonably be expected to prejudice the economic interest or competitive position of the Board. The expectation must not be fanciful, imaginary or contrived, but rather one that is based on reason. The evidence submitted in support of the Board's claim is speculative and not sufficient to establish a reasonable expectation of prejudice to the economic interest or competitive position of the Board. Therefore, none of the records qualify for exemption under section 18(1)(c).

The salary and employment benefits of the CEO and Senior VP are clearly information about these individuals, and fit within the definition of personal information under section 2(1) of the *Act*.

Section 21(4) is a clear indication by the legislature that the disclosure of the identified types of information is in the public interest. The words "despite subsection (3)" do not limit the application of section 21(4) to those types of information identified in section 21(3), rather they identify types of information that the legislature clearly intended to fall within the exception contained in section 21(1)(f).

Monies paid by the Board to provide salary and benefits to its officers and employees are properly characterized as "public funds" and should be considered as such for the purposes of the *Act*.

In defining what constitutes a benefit under section 21(4)(a), a distinction between standard benefits and negotiated benefits is artificial. Particularly at a senior level, it is reasonable to expect that there will be a certain element of negotiation involved in establishing salary and benefit packages. Benefits are provided as a part of a remuneration package to employees, solely by virtue of the employer-employee relationship, regardless of whether a particular benefit has been negotiated.

The list of benefits enumerated in Order M-23 by Commissioner Wright was not intended to be exhaustive. The term "benefits" should be given an extensive definition in order to be consistent with the intent of both section 21 and the *Act* as a whole. The entitlements provided to the CEO and the Senior VP as part of their employment as officers and/or employees of the Board are properly characterized as "benefits" for the purpose of section 21(4)(a). Therefore, release of the salary ranges and benefits would not constitute an unjustified invasion of their personal privacy.

The ranges provided, although perhaps large in numerical terms, are reasonable in the circumstances, given the salary levels of the positions involved. The difference between the top and bottom of the ranges established by the Board is approximately 26%, which is less than the spread in salary ranges for senior positions in the Ontario Civil Service.

#### SECTIONS CONSIDERED

18(1)(c), 2(1), 21(4)(a)

#### PREVIOUS ORDERS CONSIDERED

181, P-346, M-5, M-23

## ORDER P-381 APPEAL P-9200553

Institution: Ministry of the Attorney General

DECEMBER 16, 1992

(INQUIRY OFFICER SEIFE)

### KEYWORDS

personal information • solicitor client privilege • crown counsel • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy

The Ministry received a request for access to the prosecution case file and exhibits entered at a criminal trial involving the requester. The Ministry granted access to 31 pages of the record and denied access in whole or in part to the remaining 61 pages pursuant to sections 14, 15, 19 and 21 of the *Act*.

### ORDER

The decision of the Ministry was upheld.

During mediation, the appellant agreed not to pursue access to certain pages and the Ministry disclosed additional pages to the requester. A total of 25 pages remained at issue. In its representations, the Ministry indicated that its discretion to deny access to the remaining pages of the record was exercised under section 49 of the *Act*. The Ministry made no representation with respect to the application of the discretionary exemptions under section 14 and 15 and those sections were not considered in the appeal.

All of the record contains personal information. Certain pages contain personal information that relates solely to the appellant; other pages contain personal information that relate to both the appellant and other individuals.

The discretionary exemption provided by section 49(a) is available to the

Ministry with respect to these records because 16 pages qualify for exemption under section 19.

Because the remaining pages contain personal information that was compiled and is identifiable as part of an investigation into a possible violation of *The Criminal Code of Canada* by the appellant, the requirements for presumed unjustified invasion of personal privacy under section 21(3)(b) have been satisfied. These pages do not contain information relevant to section 21(4) and none of the factors under section 21(2) which favour disclosure of the record are present in the circumstances of this appeal. Therefore, the presumption raised by section 21(3)(b) has not been rebutted and disclosure of the severed portions of the record would constitute an unjustified invasion of the personal privacy of other individuals.

### SECTIONS CONSIDERED

19, 21(2), 21(3)(b), 21(4)

### PREVIOUS ORDERS CONSIDERED

None

## ORDER P-382 APPEAL P-920146

Institution: Ministry of the Attorney General

DECEMBER 16, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • right of correction

The Ministry received a request for access to, and correction of, a court transcript and any additional records about the requester in the possession of certain Ministry staff. The Ministry identified 218 responsive records and released 217 of them to the appellant. Part of the one remaining record was severed pursuant to sections 13(1) and 19 of the *Act*. The Ministry later withdrew its exemption claims and released the remaining record

to the appellant, thereby resolving the access portion of the appeal.

During mediation, the appellant indicated that she wanted to have the records destroyed instead of corrected. The Ministry agreed to destroy all of the responsive records, with the exception of the court transcript, on the condition that the appellant sign an undertaking not to make any new requests for the destroyed records and not to communicate with anyone in the Ministry regarding the contents of the destroyed records. The appellant did not sign the undertaking and, as a result, the Ministry did not destroy the records.

The appellant's request is properly characterized as a request for correction of records containing her personal information, by way of destruction. It is not necessary to consider whether destruction is the most appropriate remedy, because the appellant has failed to establish the requirements for a proper correction request.

### ORDER

The Ministry's decision to deny the appellant's request for correction is upheld.

The requirements necessary for granting a request for correction are: the information at issue must be personal and private information; and the information must be inexact, incomplete or ambiguous; and the correction can not be a substitution of opinion. The appellant has not identified the specific information that she believes is incorrect, nor has she presented sufficient facts to substantiate her allegation that the records are false or inaccurate.

### SECTIONS CONSIDERED

47

### PREVIOUS ORDERS CONSIDERED

None



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## ORDER P-383 APPEAL P-920178

Institution: Ministry of Natural Resources

DECEMBER 16, 1992

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

reasonable steps to locate record

The Ministry received a request for access to two files concerning the history and details of disposition of lot 4, concession 3, Township of Hugel, Nippissing District. The Ministry granted access to the requested records. The requester examined the records and found references to other records which were not located in the file. The requester appealed the Ministry's decision, believing that other records exist.

### ORDER

The Ministry's search was reasonable in the circumstances.

The appellant provided a list of the records which he believes are missing and submits that the records may be contained in a file pertaining to a different lot number.

The Ministry does not dispute the fact that additional responsive records may have existed, however, based on its search, the Ministry's position is that it has no such records in its custody or control. The Ministry provided two affidavits with outline steps taken by Ministry staff to locate any responsive records.

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## ORDER P-384 APPEAL P-9200444

Institution: Ministry of Education

DECEMBER 16, 1992

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

custody or control

The Ministry received a request for access to a list of all retail stores in Cornwall that were given FUTURES program placements in the twelve months proceedings the request. The Ministry denied access to the information because responsive records were neither in the custody nor under the control of the Ministry.

### ORDER

The Ministry's decision was upheld.

The records at issue do not reside at the Ministry and FUTURES delivery organizations are not agents of the Ministry. The FUTURES program in Cornwall is delivered on a purchase of service basis through a transfer payment contract with the Youth Employment Counselling Centre. Information respecting employers in the program is not forwarded to the Ministry at any time. The Ministry inspection and audit rights are only for the purpose of ensuring the program compliance and accountability.

### SECTIONS CONSIDERED

10

### PREVIOUS ORDERS CONSIDERED

119

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## ORDER P-385 APPEAL P-910041

Institution: Ministry of Natural Resources

DECEMBER 18, 1992

(INQUIRY OFFICER SEIFE)

### KEYWORDS

third party information • commercial  
• financial • "supplied" • "in confidence"  
• reasonable expectation of • harm  
• competitive position

The Ministry received a request for access to records relating to a five year contract between the Ministry and a named company for the growing of tree seedlings. The request included access to all copies

of correspondence between the Ministry and the company, the tender submitted by the company, the number of additional seedling orders from the company between 1983 and 1991 and all grants received by the company between 1983 and 1990.

After notifying the company of the request, the Ministry granted partial access, denying access to the remainder of the records pursuant to section 17(1)(a) of the *Act*. During the processing of the appeal, the company agreed to the disclosure of additional records. These records were released to the appellant by the Ministry.

### ORDER

The Ministry was ordered to disclose the records to the appellant.

In order to qualify for exemption under section 17(1)(a), the Ministry and/or the company must satisfy all parts of a three part test.

The information contained in all of the records qualifies as commercial and/or financial information. Therefore part one of the test is met.

The company has not established that the information in the remaining records was "supplied" to the Ministry "in confidence". However, rather than make a conclusive finding on part two of the test, the decision was based on the application of the third part of the test.

The company provides no additional facts or arguments other than repeating the assertion that disclosure of the information could reasonably be expected to result in significant harm to its interest. The company has failed to provide any objectively reliable evidence as to how its competitors could use the information in a way which could result in a significant

prejudice to its competitive position (Section 17(1)(a)). The company has failed to establish the requirements of part three of the three part test. Therefore, none of the records at issue in this appeal is exempt under section 17(1)(a).

**SECTIONS CONSIDERED**

17

**PREVIOUS ORDERS CONSIDERED**

36

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**ORDER P-386**

**APPEALS P-9200292,  
P-9200294, P-9200295,  
P-9200296, P-9200297,  
P-9200301, P-9200302,  
P-9200307, P-9200397 AND  
P-9200398**

Institution: Stadium Corporation of Ontario Limited

DECEMBER 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

compliance investigation • reasonable steps to locate record • record does not exist  
• transfer of request

Between November 1991, and March 1992, the Stadium Corporation of Ontario Limited (SkyDome) received 10 requests from the same individual for information relating to the proposed sale of SkyDome. SkyDome issued several decision letters, each denying access on the basis that no records exist. The requester appealed all of the decisions. The Compliance Department of the IPC was asked to attend at SkyDome and make an independent determination as to whether SkyDome had made reasonable efforts to locate responsive records. Following the completion of the Compliance Department's investigation, an official at SkyDome was asked to search the files of certain members of the Board of Directors and to determine the

institutional status of the committee negotiating the sale of SkyDome. SkyDome did not respond to the request.

**ORDER**

SkyDome's position that no responsive records exist in its custody or under its control is reasonable in the circumstances. SkyDome was ordered to transfer the 10 requests to the Ministry of Treasury and Economics and to advise the appellant in writing of this transfer.

When the Compliance Department staff attended at SkyDome to determine the adequacy of search for responsive records, they were advised that no searches had been conducted. Accordingly, the searches for responsive records were not reasonable. However, based on the independent investigation conducted by the Compliance Department, SkyDome's position that no responsive records exist is a reasonable one, but only as it relates to records within the custody or under the control of SkyDome.

In its representations, SkyDome confirmed that the committee negotiating the sale of SkyDome is a provincial committee, reporting directly to the Treasurer of Ontario and not to SkyDome. An official at the Ministry of Treasury and Economics confirmed that the negotiating committee does not report to the Board of Directors of SkyDome. Therefore, any records relating to the activities of the negotiating committee, if they exist, would be in the custody or under the control of the Ministry of Treasury and Economics.

SkyDome failed to comply with the requirements of section 25(1) of the *Act* which states that where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the institu-

tion shall make all necessary inquiries to determine whether another institution has custody or control and shall forward the request to the other institution within 15 days. Under this section, the institution must also advise the requester of the transfer.

In a postscript to the Order, the Assistant Commissioner commented that the actions of SkyDome during the course of these appeals were clearly not in keeping with the spirit of the *Act*, and, not what would be expected from an institution which has had considerable experience in dealing with the request and appeal procedures contained in the *Act*.

**SECTIONS CONSIDERED**

25

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER P-387**

**APPEAL P-910095**

Institution: Ministry of Health

DECEMBER 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

application of the *Act* • clinical record  
• *Mental Health Act* • personal information • name • public scrutiny  
• relevant to • fair determination of rights  
• presumption of • unjustified invasion of  
• personal privacy

The Ministry received a request for access to correspondence relating to certain activities of the requester. The Ministry denied access to the responsive records pursuant to sections 14(1)(a), (b), (d) and (f), 14(2)(c) and (d), 20 and 21(1) of the *Act*. During mediation the scope of the request was narrowed to include only the signatures of the authors of one letter. After being informed of the narrowed request the Ministry issued a revised de-



cision, denying access to the signatures pursuant to section 21(1) and 65(2)(a) of the *Act*.

#### ORDER

The Ministry's decision under section 21 was upheld.

In order for a record to fall within the scope of section 65(2)(a), it must be in respect of a psychiatric patient, and it must be a "clinical record" as defined by section 35(1) of the *Mental Health Act*. The signatures on the letter, in and of themselves, do not satisfy these requirements and, therefore, section 65(2)(a) does not apply to the record at issue in this appeal.

In order for section 21(1) to apply, the information at issue must be "personal information", as defined in section 2(1) of the *Act*. Although a name alone does not qualify as an individual's "personal information", where that name appears in the context of a specific complaint filed by an individual, the name satisfies the requirements of paragraph (h) of the definition in that disclosure of the name would reveal other personal information about the individual.

The names of the authors of the record, in and of themselves, are not properly characterized as any of the types of information listed in section 21(3)(a), or any of the other types of information listed in other subsections of section 21(3). Therefore, there is no presumption of an unjustified invasion of personal privacy.

The appellant submits that he requires the record for two reasons: to proceed with the request to the Health Disciplines Board to review a decision by the College of Nurses of Ontario regarding a complaint he lodged; and to assist the investigation of a complaint he has filed with the Office of the Ombudsman. He

submits that disclosure of the record would submit the activities of the Ministry to public scrutiny (section 21(2)(a)) and would be relevant to a fair determination of his rights (section 21(2)(d)).

Disclosure of the signatures of the authors of the record would not subject the activities of the Ministry to public scrutiny, therefore, section 21(2)(a) is not a relevant consideration. Although the appellant has a legal right to request a review of a decision of the College of Nurses by the Health Disciplines Board and to lodge a complaint with the Office of the Ombudsman, the appellant has failed to establish that the signatures may have some bearing on the determination of these rights, or that these signatures are required in order to prepare for the proceedings or to ensure an impartial hearing. Therefore, section 21(2)(d) is not a relevant consideration.

Because none of the factors which weigh in favour of disclosure of the signature apply in the circumstances of this appeal, the mandatory exemption provided by section 21(1) applies to prohibit disclosure of the signatures.

#### SECTIONS CONSIDERED

21(3)(a), 21(2)(a) and (d), 65(2)(a)

#### PREVIOUS ORDERS CONSIDERED

P-312

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### ORDER P-388

#### APPEAL P-9200588

Institution: Ministry of Northern Development and Mines

DECEMBER 22, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

relations with other governments  
• intergovernmental relations • third party  
information • scientific • technical  
• financial • "supplied" • "in confidence"

The Ministry of Northern Development and Mines received a request for access to information relating to certain funding proposals submitted to the Ministry under the Mine Technology Research Sub-Program of the Northern Ontario Development Agreement (NODA), together with the Ministry's evaluations of the proposals.

Northern Ontario Development Agreement is a joint undertaking of the Government of Canada and the Government of Ontario whose purpose is to encourage economic development and diversification in Northern Ontario by the development and implementation of strategies for sustainable development in tourism, forestry and minerals. A joint federal provincial management committee administers the programs operated under NODA. The mining and minerals technology program technical sub-committee is responsible for administration of the funding program.

The Ministry provided access to only one proposal which involved the requester, and denied access to all other responsive records pursuant to sections 15(a) and 17(1) of the *Act*. Notice that an inquiry was being conducted to review the decision of the ministry was sent to the appellant, the ministry and 14 companies or individuals who submitted proposals. Only one affected person objected to the release of the proposal and evaluation relating to his project.

#### ORDER

The Ministry was ordered to disclose the requested proposals and their evaluations.

The Ministry's representations, as well as the federal government's position, focus on the possibility that the release of the records would prejudice the relationship

between the mining industry and both levels of government, not the relationship between the federal and provincial governments, themselves. Accordingly, the Assistant Commissioner found that the Ministry had failed to establish an expectation of prejudice to the conduct of intergovernmental relations could reasonably be expected to result from the disclosure of the records and, therefore, the records do not qualify for exemption under section 15(a).

In order for a record to qualify for exemption under section 17(1)(a)(b) or (c), the Ministry and/or the affected person resisting disclosure must satisfy each part of a three part test. In the circumstances of this appeal the Assistant Commissioner found that the information at issue consist of scientific, technical and/or financial information with the exception of some portions of the evaluations. The Assistant Commissioner also found the proposals and those parts of the evaluations which contain scientific, technical and/or financial information were "supplied" to the Ministry for the purposes of section 17(1). However, the Ministry and/or the affected person failed to establish that the record or parts of the record which were supplied to the Ministry were supplied "in confidence". Therefore, the second part of the test has not been established and the records do not qualify for exemption.

#### SECTIONS CONSIDERED

15(1)(a), 17

#### PREVIOUS ORDERS CONSIDERED

36, 210

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### INTERIM ORDER P-389 APPEAL P-910091

Institution: Ministry of Community and Social Services

DECEMBER 22, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

application of the *Act* • psychiatric patient  
• clinical record • *Mental Health Act*

The Ministry of Community and Social Services received a request for access to two psychiatric reports prepared at the Peterborough Civic Hospital concerning the requester's client. The records at issue are photocopies of a letter from a psychiatrist at the hospital to another physician concerning the client and a two page psychiatric assessment prepared by a psychologist at the hospital also concerning the client. The Ministry of Health was added as an affected party to the appeal and provided with an opportunity to submit representations.

#### ORDER

The Ministry was ordered to provide the appellant with a proper decision letter regarding access to the records within 20 days.

In order for a record to fall within the scope of section 65(2)(a), it must be in respect of a psychiatric patient, and it must be a "clinical record" as defined by section 35(1) of the *Mental Health Act* (the *MHA*). Because the records were compiled by doctors of the Department of Psychology at the Peterborough Civic Hospital which has been designated as a "psychiatric facility" and because the records were created after the appellant's client was examined at the hospital as an out patient, the Assistant Commissioner was satisfied that the records are "in respect of psychiatric patient". However, both the appellant and the Ministry of Health agreed that the records were not "clinical records". Therefore, they fall outside the scope of section 65(2)(a) of the *Act*.

In order for a clinical record to fall within the scope of section 65(2)(b) it must satisfy a three part test. It must: contain

the types of information listed in 65(2)(b) and be in respect of a psychiatric patient and have a clinical purpose, nature or value. By its nature, a copy of a clinical record would satisfy the first two requirements, but the third requirement is not met as the record is maintained by the Ministry for a non clinical purpose. Therefore, the requirements of the third part of the test under section 65(2)(b) have not been established.

#### SECTIONS CONSIDERED

65(2)(a), 65(2)(b)

#### PREVIOUS ORDERS CONSIDERED

P-374

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### ORDER P-390

#### APPEAL P-9200577

Institution: Ministry of Transportation

DECEMBER 22, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

law enforcement • investigation • report

The Ministry of Transportation received a request for access to a copy of "the investigation report and all material related thereto" which resulted from an investigation by the Ministry into certain complaints made against a company that holds licenses issued pursuant to the *Truck Transportation Act*. The Ministry denied access to the information pursuant to sections 14(2)(a)(b) and (c) and 17(1)(a)(b) and (c) of the *Act*.

The original complaints received by the Ministry alleged the Registrar of Motor Vehicles was obliged to cancel a portion of the company's operating licenses because it had failed to provide transportation services for a continuous period of one year.

The record at issue is a report which was prepared in the course of an investigation



and submitted to the registrar by an enforcement officer employed at the Ministry's Carrier Control Office.

#### ORDER

The Ministry's decision was upheld.

For a record to qualify for exemption under section 14(2)(a), the Ministry must satisfy each part of a three part test. The record at issue in this appeal meets all three parts of the test. The record clearly qualifies as a report as it summarizes the investigation, makes findings of fact and draws conclusions about the validity of the complaint received by the Registrar. The record was prepared in the course of an investigation carried out pursuant to section 24 of the *Truck Transportation Act*. Finally, the record was prepared by an enforcement officer from the Carrier Control Office of the Ministry, the agency which has the function of enforcing and regulating compliance with the *Truck Transportation Act*.

#### SECTIONS CONSIDERED

14(2)(a)

#### PREVIOUS ORDERS CONSIDERED

200

### ORDER P-391

#### APPEAL P-9200403

Institution: Ministry of the Solicitor General

DECEMBER 23, 1992

(COMMISSIONER WRIGHT)

#### KEYWORDS

affected person • whether able to raise exemption not relied upon by institution  
• personal information • evaluations  
• highly sensitive • presumption of  
• unjustified invasion of • personal privacy  
• law enforcement • danger to life or safety  
• public interest override

The Ministry of the Solicitor General received a request for access to a record

identified as the "level three inspection report 1992 -Belleville Police Force". The Ministry granted access to 101 pages of the report in full and denied access to parts of the remaining 15 pages pursuant to sections 14(1)(b) and (e) and 21 of the *Act*. The requester appealed the Ministry's decision and raised the possible application of section 23 of the *Act*, the "public interest override". Notice that inquiry was being conducted to review the Ministry's decision was sent to three individuals, (the affected persons, one, two and three) and another party, (the affected party), whose interests might be affected by disclosure of the record. In its representations, the affected party claimed that sections 21(1), 14(1)(a)(f), 14(2)(a) and 18(1)(f) of the *Act* apply to the record. The affected party also claimed that section 14(1)(b) applies to the entire record not just a small portion, as claimed by the Ministry.

#### ORDER

The decision of the Ministry was partially upheld.

Sections 14(1)(a) and (f), 14(2)(a) and 18(1)(f) are discretionary exemptions which were not claimed by the Ministry. In the Commissioner's view, the appeal is not one of those "rare occasions" when an exemption, other than a mandatory exemption, not raised by the Ministry, should be considered.

Part of the record contains the personal information of "affected person one" only; other pages contain the personal information of affected persons "one" and "two" and another page contains the personal information of affected person "three" only. One page contains case numbers which, if disclosed, could not identify a particular individual and, therefore do not satisfy the requirements of the definition of personal information.

Both the Ministry and the affected party claim that section 21(3)(g) applies to the severances on certain pages. Although, it could be argued that some of the severances contain "evaluations" of the author of the report, because of the nature of the report, the severed information has no "personal" or "personnel" component as required by section 21(3)(g). The information at issue can be considered to be highly sensitive and section 21(2)(f) applies to all the personal information which has been severed from the record. Since none of the factors listed in section 21(2) which favour disclosure are present, the disclosure of the information severed from certain pages would constitute an unjustified invasion of the affected persons' personal privacy.

The Ministry has provided sufficient information to satisfy the requirements for the application of section 14(1)(b) in that disclosure of the record could reasonably be expected to interfere with an investigation from which a law enforcement proceeding is likely to result.

The information about the types of firearms and the training in their use provided to members of the Belleville Police Force does not qualify for exemption under section 14(1)(e). Disclosure of this information would not reveal any information that has not already been discussed publicly in relation to police forces across the province.

Section 23 does not apply to information which has been found to be exempt under section 14 of the *Act*, therefore the Commissioner's discussion of section 23 is restricted to severances on one page only. The appellant submits that there is a compelling public interest in the disclosure of the entire record in order to restore public confidence in the Belleville Police Force. The Ministry has ordered an inquiry into the conduct of the

Belleville Police Force and the Belleville Police Services Board. The appellant has received access to virtually the entire record. The record, including the small portion which has not been disclosed, will form part of the subject matter of the "inquiry" the Ministry has ordered. In the Commissioner's view, the degree of disclosure which has taken place, together with the fact that a "inquiry" is presently underway, leads him to conclude that section 23 of the *Act* does not apply.

#### SECTIONS CONSIDERED

2(1), 14(1)(b), 14(1)(e), 21, 23

#### PREVIOUS ORDERS CONSIDERED

None

### ORDER P-392

#### APPEAL P-910489

Institution: Ministry of the Attorney General

JANUARY 4, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

law enforcement • investigation • report  
• personal information • psychological  
evaluation • compiled as part of  
• relevant to • fair determination of rights  
• presumption of • unjustified invasion of  
• personal privacy • another individual's  
personal privacy

The Ministry of the Attorney General received a request for access to all records relating to a charge of sexual assault laid against the requester's former husband. The requester indicated that she was requesting access to the information on behalf of herself and her 11 year old child who was the victim of the alleged assault.

The Ministry granted partial access to the record. It cited section 21 to deny access to a psychological assessment of the husband and parts of three pieces of correspondence where reference was made to

the psychological assessment; sections 19 and 21 to deny access to a statement of certain individuals; and section 14(2)(a), 19 and 21 to deny access to a record prepared by a police officer. During mediation, the Ministry provided partial access to the husband's statement and the appellant indicated that she was not seeking access to the psychological assessment.

#### ORDER

The Ministry's decision was partially upheld.

Because the appellant has provided evidence of her lawful custody of the child, the Inquiry Officer was satisfied that it was appropriate to consider the request under section 66(c) which allows a person who has lawful custody of an individual who is less than 16 years of age to exercise any right or power conferred on the individual by the *Act*.

The severed portion of the husband's statement and the references to the psychological assessment consist of recorded information about the husband and this information qualifies as the personal information of the husband. These severances do not contain any personal information of the appellant or her child. The record prepared by the police officer contains recorded information about the appellant, her child and the husband and qualifies as personal information of all three parties.

In order to properly exempt a record under section 14(2)(a), the Ministry must satisfy each part of a three part test. The record was prepared by an officer of the Ontario Provincial Police which is properly considered to be an agency which has the function of enforcing and regulating compliance with the law. However, the record at issue was prepared in the course of a supervisor's internal investigation

into the conduct of an officer of the court, not an investigation which carried with it the possibility of a "law enforcement" proceeding. Therefore, section 14(2)(a) is not applicable.

The appellant submits that because a copy of the psychological assessment was disclosed to her by the husband's lawyer, the husband has voluntarily waived his right to privacy in reference to the assessment and, therefore, to the passages which refer to it. In the Inquiry Officer's view, the fact that the appellant is in possession of the psychological assessment does not negate the application of section 21(3). The references to the psychological assessment relate to a psychological evaluation of the husband and the presumption that disclosure would constitute an unjustified invasion of privacy found in section 21(3)(a) applies. Although certain personal information will be disclosed to the public during a public court proceeding, it does not necessarily follow that by becoming involved in such a proceeding an individual has waived his or her privacy rights and that the personal information should, therefore, be freely and routinely available to anyone who asks, particularly if the public court proceeding has not commenced. The fact that the charge was withdrawn does not negate the application of section 21(3)(b). Because the husband's statement was compiled and is identifiable as part of an investigation into a possible violation of law, the presumption found in section 21(3)(b) applies.

Section 21(4) is not relevant in the circumstances of this appeal. Section 21(2)(d) is not a relevant consideration because the appellant has not established that the personal information which she is seeking has any bearing on or is significant to the determination of the right in question or that the personal information is required to prepare for a proceed-



ing or to ensure an impartial hearing. The victim of the alleged offence, and/or the mother of the victim, does not have an absolute right under the *Act* to view all material relating to the allegation. The appellant and the child's right of access must be balanced against the husband's right to the protection of his privacy.

None of the presumptions contained in section 21(3) apply to the record prepared by the police officer. None of the factors listed under section 21(2) which weigh in favour of not disclosing the information are relevant in the circumstances of this appeal. Therefore, the disclosure of the record prepared by the police officer would not be an unjustified invasion of the husband's personal privacy and section 49(b) does not apply.

#### SECTIONS CONSIDERED

2(1), 14(2)(a), 21, 49(a), 49(b)

#### PREVIOUS ORDERS CONSIDERED

200, P-312

### ORDER P-393

#### APPEAL P-920093

Institution: Ministry of Health

JANUARY 6, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

third party information • commercial  
• financial • "supplied" • "in confidence"

The Ministry of Health received a request for records pertaining to the relationship between the Ministry and a company which operates specimen collection centres in various towns in the province of Ontario. Specifically, the requester sought "the agreement between the Ministry and the company and any amendments to the agreement, the amounts that the company has billed the Ministry and the amounts that the Ministry has paid the company since the date

of the agreement, on an annual basis". The Ministry granted access to the agreement and an internal memorandum but denied access to a three page schedule of payments under section 17(1)(a) of the *Act*.

#### ORDER

The Ministry was ordered to disclose the record.

For a record to qualify for exemption under 17(1)(a), the Ministry and/or the company must satisfy the requirements of each part of a three part test.

All of the information contained in the record qualifies as commercial and/or financial information. Therefore, the first part of the test is met.

To meet the second part of the test the Ministry or the company must prove that the information was supplied in confidence either explicitly or implicitly. In order to satisfy the "supplied" part of the test, it is not necessary to show that the record itself was supplied to the Ministry. The requirements of the test will be satisfied if it can be demonstrated that information contained in the record was originally supplied to the Ministry. The format in which the information is presented is not determinative of the issue of whether it was supplied. The information contained in the schedule of payments was originally "supplied" to the Ministry through the invoices submitted to it by the company. The fact that the information was subsequently incorporated into a record created by the Ministry does not alter the fact that it was originally supplied to the Ministry by the company. Similarly, information not contained in a record can be found to have been supplied if it is possible to ascertain, based on the contents of the record, the actual information supplied to the Ministry. The company has not

explained how or in what way the information in the record could be used to determine workload volume at individual specimen collection centres. Therefore, the parties resisting disclosure have failed to provide sufficient evidence to persuade the Inquiry Officer that inaccurate inference about the company can be drawn from the information contained in the record. Neither the Ministry nor the company have addressed the element of confidentiality in their representations. Therefore, the Inquiry Officer found that the second part of the test for exemption under section 17(1)(a) of the *Act* had not been established.

#### SECTIONS CONSIDERED

17

#### PREVIOUS ORDERS CONSIDERED

36

### ORDER P-394

#### APPEALS P-9200290 AND P-9200353

Institution: Ontario Northland  
Transportation Commission

JANUARY 6, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • economic or other  
interests • third party information  
• commercial • financial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position • similar  
information • no longer supplied • undue  
loss or gain

The Ontario Northland Transportation Commission (the ONTC) received two requests for access to copies of 1) the contract between the ONTC and Bearskin Airways (Bearskin) and the "deal" between the ONTC and Air Ontario, and 2) the ONTC study of DASH 8 service into Kenora.

The ONTC denied access to records responsive to the first request pursuant to section 17 and 18 of the *Act* and to the records responsive to the second request pursuant to sections 13 and 18 of the *Act*. During mediation the agreement, with the exception of schedules E and F were disclosed to the appellant. Therefore, the records remaining at issue are schedules E and F of the agreement between ONTC and Bearskin and four related change notices to the agreement (Record 1) and the market analysis data which consists of a financial analysis of costs, passenger load analysis and a financial comparison. (Record 2)

Bearskin submitted that Record 1 must not be disclosed in keeping with the privacy protection purpose of the *Act*. The use of the term "individual" in the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons.

#### ORDER

The ONTC decision was partially upheld.

In order to qualify for exemption under section 18(1)(a), the ONTC must establish that the information is a trade secret, or a financial, commercial, scientific or technical information; and belongs to the government of Ontario or an institution; and has monetary value or potential monetary value. Although Records 1 and 2 contain financial and commercial information, it is not clear to which party the information belongs or whether it belongs to both. In any event, the purpose of section 18(1)(a) is to permit the ONTC to refuse to disclose the record where circumstances are such that disclosure would deprive the ONTC of the monetary value of the information. In order to satisfy the third part of the test, the information itself must have an in-

trinsic monetary value. In the circumstances of this appeal, the information itself does not appear to have monetary value or potential monetary value.

To establish a valid exemption under section 18(1)(c), the ONTC must successfully demonstrate a reasonable expectation of prejudice to the economic interest or competitive position of a government institution rising from disclosure of the information. The ONTC has not provided any evidence in support of the application of section 18(1)(c) to Record 1. In the Inquiry Officer's view, only Record 2 contains information that disclosure of which could reasonably be expected to prejudice the economic interest or competitive position of the ONTC.

The ONTC has not provided detailed and convincing evidence that disclosure of the information in Record 1 could reasonably be expected to injurious to the financial interest of the government of Ontario or the ability of government of Ontario to manage the economy of Ontario.

In order to be exempt under section 17(1)(a)(b) or (c), ONTC must establish all three parts of the three part test. Only some of the information contained in Record 1 qualifies as financial and/or commercial information (Part 1). Both Bearskin and ONTC have failed to establish the information was supplied in confidence, the second part of the section 17(1) test.

Bearskin has not met the requirements of the third part of the test respecting section 17(1)(a) as it has not provided detailed and convincing evidence of how competitors could use information contained in Record 1 in a way which could take business away from Bearskin.

#### SECTIONS CONSIDERED

17, 18(1)(a)(c) and (d)

#### PREVIOUS ORDERS CONSIDERED

36

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### ORDER P-395

#### APPEAL P-9200436

Institution: Ministry of Culture and Communications

JANUARY 7, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

transfer of request • institution with greater interest • affected party • representations to Commissioner • law enforcement • disclosure could interfere with investigation

The Ministry of Correctional Services received a request for access to information related to the requester's previous employment at the Grandview Training School for Girls (Grandview) during the summer of 1973, including his past employment file; position description; map of Grandview premises; names of residence and housing arrangements at Grandview during the period of his employment; names of residents who had escaped during the period of his employment; procedures at Grandview for dealing with escapes and information regarding the escape alarm system and key policy in place during the period of his employment.

The Ministry determined that any records responsive to the parts of the requests dealing with the position, specifications, map, escape procedures, alarm system and key policy would be held by the Archives of Ontario (the Archives) and transferred these parts of the request to the Archives, pursuant to section 25 of the *Act*. The Archives indicated that no records containing the personal information of the requester were located. The



Archives identified one directly responsive record, the sight plan for Grandview, and four other records which were not directly responsive but did deal with the subject matter of the request. The Archives denied access to all five records in their entirety pursuant to sections 14(1)(a)(b)(f)(g)(i)(j) and/or (k), 14(2)(d), 21(1) and 21(2)(f) and (i) of the *Act*. The requester appealed the Archives' decision.

There are five records at issue: a memorandum describing the number and type of summer jobs available at Grandview during 1973; a sightplan; a memorandum regarding the use of OPC forms to report training school runaways; portions of two routine inspection reports; and the transcript of minutes from a Grandview employee relations committee meeting.

The Archives requested that the Waterloo Regional Police and the Ministry of the Solicitor General be added as affected parties to the appeal. The Assistant Commissioner denied the request because sections 25-27 of the *Act* provide a scheme to address the situation where more than one institution has an interest in certain requested records. These sections permit inter-institutional consultations and the transfer of a request from one institution to another. There is no statutory right for an institution other than the one which has responded to an access request to be a party to an appeal. It is the responsibility of the Commissioner or his delegate to consider the circumstances of a particular appeal and determine if any other person should be given the status of an affected party based on the necessity or desirability of having those persons participate.

#### ORDER

The Archives decision was partially upheld.

Evidence provided by the Archives is sufficient to establish the requirements of section 14(1)(b) with respect to records four and five. These records deal with various aspects of the operation of Grandview and outline certain procedures in place during the mid - 1970's and identify the activities of certain named individuals. Release of these two records could reasonably be expected to interfere with the current police investigation which has been undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result (section 14(1)(b)).

The Assistant Commissioner found that Records 1, 2 and 3 do not qualify for exemption under any of sections 14(1)(a)(b)(f) or (l). Record 1 is a memo which describes a number and type of summer job positions available at Grandview in 1973 and the qualifications and pay assigned to these positions. The memo is purely factual in nature and includes no information specific to any identifiable individual. Similarly, Record 3 is a memo which provides the author's views as the use of a form to report runaways from training schools. Record 2, the sightplan, contains the topographical representation of the grounds of Grandview. In the Assistant Commissioner's view, disclosure of Records 1, 2 and 3 could not reasonably be expected to result in any of the enumerated harms identified in sections 14(1)(a)(b)(f) or (l).

The Archives claim section 14(1)(i)(j) and (k) of the *Act* as additional grounds for refusing to disclose Record 2. The Archives submits that the disclosure of information "about the grounds and buildings of the Waterloo Detention Centre would both endanger and possibly seriously compromise the security of that facility...and could be well used to facilitate the escape of persons who are under lawful detention in that correc-

tional facility". The Assistant Commissioner found that the parts of Record 2 which would identify the former "Churchill House" and the 4-5 acres of surrounding land which serve as the Waterloo Detention Centre should be severed from the record and the rest of the record should be released to the appellant.

#### SECTIONS CONSIDERED

14(1)(a)(b)(f)(g)(i)(j) and/or (k)

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER P-396

#### APPEAL P-9200466

Institution: The Rent Review Hearings Board

JANUARY 8, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

- custody or control • application of the *Act*
- notes in connection with a proceeding
- administrative tribunals

The Rent Review Hearings Board (the Board), an agency of the Ministry of Housing (the Ministry), received a request for a copy of notes made at a pre-hearing conference by the Board member who presided at the conference. The Ministry denied access claiming that any notes that may have been taken were not in the custody or under the control of the Board. During the course of processing the appeal, the Ministry acknowledged that the notes did exist but refused to provide a copy of them to the Commissioner's Office, again claiming that they were not in the custody or under the control of the Board. Because the issue of custody and control of a Board member's notes has implications beyond the scope of this particular appeal, a group representing the chairs of certain provincial agencies, boards and commissions was

added as an affected party and provided with an opportunity to submit representations.

#### ORDER

The Ministry's decision was upheld.

The application of freedom of information legislation to the notes of members of administrative tribunals has been considered a number of times throughout the history of the development of the *Act*.

In 1990, the government proposed an amendment to section 65 which would have excluded notes prepared by or for a member of a tribunal from the scope of the *Act*. Although this amendment was never passed into law, by introducing the amendment, the government implicitly acknowledged that tribunal members notes were currently covered by the *Act*, provided they were found to be in the custody or under the control of the tribunal.

In the Assistant Commissioner's view, it was not necessary to address the issue of an adjudicative independence in order to dispose of the appeal. The sole issue is whether the Board members' notes are in the custody or under the control of the Board, not whether the Board is able to demand production of the notes from its members. The fact that the members of the Board are independent decision-makers and not subject to the control or influence of the Board in the way in which they reach their decisions is not determinative of whether the notes are in the Board's custody or under its control.

Former Commissioner Sidney B. Linden outlined what he felt was the proper approach to determining whether specific records fell within the custody or control of an institution in Order 120. A number of other orders have dealt with issue of custody and control; all turn on

the particular circumstances of the appeal in relation to the types of factors listed by former Commissioner Linden in Order 120.

It is clear from the Board's representations that the notes are not currently in the custody of the Board. The issue of whether the notes are under the control of the Board is more complex. The notes which are the subject matter of the appeal are currently located outside the Board premises and are in the Board member's personal possession. The Board does not regulate the use of the notes and has taken no steps to exert control over them. They were created by the Board member for her own personal use and she never allowed any other person to see, read or use the notes for any purpose. Having reviewed the representations of all the parties and bearing in mind the indicia of control identified by former Commissioner Linden in Order 120, the Assistant Commissioner found that the notes created by the Board member are not in the control of the Board and therefore not accessible under the *Act*.

#### SECTIONS CONSIDERED

10

#### PREVIOUS ORDERS CONSIDERED

120, P-239, P-271, P-326, M-59

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### ORDER P-397 APPEAL P-9200701

Institution: Ontario Human Rights Commission

JANUARY 8, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The Ontario Human Rights Commission (the OHRC) received a request for copies of correspondence between the

requester's member of provincial parliament (MPP) and his staff and the OHRC regarding a complaint initiated by the requester against Laurentian University. The OHRC conducted a search of its records and located a letter from the MPP addressed to "to whom it may concern". A copy of that record was provided to the requester. The OHRC advised the requester that no further records exist which are responsive to the request. The requester appealed the decision and maintained that additional records exist.

#### ORDER

The OHRC's search for responsive records was reasonable in the circumstances.

The affidavit submitted by the Commission sets out the steps which were taken to locate records which would be responsive to the request. It indicates that searches were undertaken by OHRC staff in its Sudbury office, where the original complaint had been filed and processed. In addition, the Freedom of Information Co-ordinator conducted a telephone conversation with the Manager of the Sudbury office and the officer who conducted the investigation into the appellant's complaint. The only record located was the letter from the appellant's MPP to which the appellant has been granted access.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER P-398 APPEAL P-9200528

Institution: Ministry of Health

JANUARY 12, 1993

(ASSISTANT COMMISSIONER MITCHINSON)



## KEYWORDS

advice to government • economic or other interests • solicitor client privilege

The Ministry of Health received a request for access to 11 specific records. The Ministry released some records and denied access to the rest, either in whole or in part, claiming sections 13(1), 18(1)(c) and (e), 19 and 21(1) of the *Act*. The requester appealed the Ministry's decision. During mediation, the appellant narrowed the scope of his request to five records. The records which remained at issue relate to a 1989 labour dispute between the Ontario Public Service Employees Union (the Union) and various ministries of the Ontario Government.

## ORDER

The Ministry was ordered to disclose the records to the appellant, subject to the severance of personal information of individuals other than the appellant.

Record B is a two-page draft affidavit prepared by the Assistant Director of the Ministry's Psychiatric Hospital Branch for the Administrator of the Penetanguishene Mental Health Centre. The affidavit was intended to be filed in support of court proceeding regarding a job action underway at the Centre during 1989. In the Assistant Commissioner's view, Record B was not prepared for the purpose of giving advice or suggesting a course of action which would be expected or rejected in the deliberative process. It can be more accurately described as an outline of certain facts that the person who drafted the affidavit felt the signatory should include in the affidavit. Record J is a single sentence severed from a memorandum from the Assistant Director to the Assistant Deputy Minister of the Ministry's Institutional Division. It describes the letter of agreement which resolve the labour relations

dispute. In the Assistant Commissioner's view, the sentence identifies an option available to the Ministry in implementing the agreement but does not contain any wording which would indicate whether this option is recommended or not. Therefore, section 13(1) does not apply to Records B and J.

Record C is a letter dated October 25, 1989 from the Deputy Minister of Correctional Services to the President of the Union. Because the letter was sent to the President of the Union, the Assistant Commissioner did not see how its release could prejudice the economic interest of the Ministry in future collective bargaining with its employees. The Ministry failed to provide the detailed and convincing evidence required to establish the requirements for the exemption under section 18(1)(c) of the *Act*. Record K is a memorandum from the Assistant Deputy Minister of the Operations Division of the Ministry of Correctional Services to other management personnel within that Ministry. The Ministry's representations regarding Record K are, at best, generalized references to possible harm and, in the Assistant Commissioner's view, the Ministry failed to provide the detailed and convincing evidence necessary to establish the requirements for exemption under section 18(1)(c).

In regard to the application of section 18(1)(e) to Record C, the only representation made by the Ministry was "it is submitted that negotiations with respect to the issues in the documents continue at this time". In the Assistant Commissioner's view, this statement alone is not sufficient to establish the requirements of the section 18(1)(e) test.

Record A is a letter from a legal counsel at the Ministry of the Attorney General to the Director of Legal Services at the Ministry of Correctional Services. There

is nothing in the letter which can accurately be described as directly relating to seeking, formulating or giving legal advice. Therefore, in the Assistant Commissioner's view, the letter simply outlines administrative arrangements put in place by the legal counsel to deal with the transfer or responsibility for a particular file to a different lawyer and therefore the record does not qualify for exemption under section 19.

## SECTIONS CONSIDERED

13(1), 18(1)(c)(e), 19

## PREVIOUS ORDERS CONSIDERED

49, 118, P-263, P-304, P-346, P-348

## ORDER P-399

### APPEAL P-900429

Institution: Ministry of Correctional Services

JANUARY 13, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

## KEYWORDS

law enforcement • investigation report  
• *Ministry of Correctional Services Act*  
• correctional authority • solicitor client privilege • personal information • highly sensitive • unjustified invasion of • another individual's personal privacy • medical information

The Ministry of Correctional Services received a request for access to records relating to the requester. The Ministry released certain responsive records and denied access to the rest pursuant to sections 49(b), 49(e) and 13(1) of the *Act*. The requester appealed the Ministry's decision. During mediation additional records were released to the appellant. The Ministry also withdrew its exemptions claimed under sections 49(e) and 13(1) and raised sections 14(2)(a), 14(2)(d), 19, 49(b), 49(d) and 65(2)(a) as a new exemption with respect to certain records. Subsequently, the Ministry

also raised the application of section 65(2)(b) to some of the records. The appellant agreed not to pursue access to the records for which section 65(2)(a) and/or (b) had been claimed.

#### ORDER

The Ministry's decision was partially upheld.

The Ministry claimed section 14(2)(a) as the basis for exempting an occurrence report and an investigation report both of which concern investigations of allegations of improper conduct made by the appellant against Ministry staff while the appellant was an inmate at a correctional facility. In order for a record to qualify for exemption under section 14(2)(a), it must satisfy all parts of a three part test. Both the occurrence report and the investigation report are properly characterized as reports and were prepared in the course of investigations, thereby satisfying the first two parts of the section 14(2)(a) exemption test.

With regard to the third part of the test, the Ministry submits that it is an institution which has the function of enforcing and regulating compliance with a law, namely the *Ministry of Correctional Services Act*. A number of previous orders have dealt with the status of internal investigations conducted by the Ministry of Correctional Services and other institutions in the context of the definition of law enforcement. In the Assistant Commissioner's view, these records are properly characterized as internal investigations into complaints about the conduct of Ministry staff and do not relate to the Ministry's law enforcement responsibilities under the *Ministry of Correctional Services Act*. This finding is substantiated by the fact that the Ministry itself acknowledges in its representations that if allegations of misconduct had been substantiated, the police would

have been involved prior to the laying of criminal charges. Therefore, the third part of the test for exemption under section 14(2)(a) has not been established by the Ministry.

The Ministry claimed section 14(2)(d) of the *Act* for three memoranda from the Acting Superintendent of Millbrook Correction Centre to other individuals in the Ministry. These memoranda describe events associated with the appellant's allegations of misconduct. The purpose of section 14(2)(d) is to allow an appropriate level of security with the respect to the records of individuals in custody. The application of this provision should not be extended so far as to allow it to be used to deny access to information simply on the basis that the requester, who is no longer in custody, is seeking information about himself. The records which have been exempted by the Ministry under this section were created almost 10 years ago and relate to investigations which have long since been completed. Regardless of whether or not the centre is a correctional authority for the purposes of section 14(2)(d), release of these records at this time to an individual who is no longer under the supervision and control of the Ministry would not interfere with the Ministry's ability to carry out its mandate.

The Ministry claims that one page of the record qualifies for exemption because it was prepared by or for Crown Counsel for use in giving legal advice or in contemplation of or for use in litigation. The Assistant Commissioner found that the page was prepared for Crown Counsel and in contemplation of litigation and, therefore, qualified under the second branch of the section 19 exemption.

Parts of the record fall under the definition of personal information contained in the *Act* and relate to both the appellant

and other individuals. The Ministry must look at the information and weigh the appellant's right of access to his own personal information against other individual's right to the protection of their personal privacy. The Ministry claims that section 21(3)(d) is a relevant consideration. These records simply identify the individuals as being employees of the Ministry which, is not sufficient to satisfy the requirements of a presumed unjustified invasion under section 21(3)(d). Sections 21(2)(e) and (i) are relevant considerations with respect to the personal information of a named individual. In the Assistant Commissioner's view, the release of a letter written by a certain individual could reasonably be expected to cause the person excessive personal distress and, therefore, section 21(2)(f) is a relevant consideration.

The records for which the Ministry has claimed section 49(d) all contain the personal information of the appellant. The records consist of the occurrence reports, memoranda, comments concerning clinical diagnosis and assessment and treatment in case management notes.

The Ministry's representation on the application of section 49(d) are based upon assessments by an individual who has not met or interviewed the appellant since 1984. In the Assistant Commissioner's view, this assessment is not sufficiently current to provide adequate information to find that disclosure of the remaining records could reasonably be expected to prejudice the mental health of the appellant.

#### SECTIONS CONSIDERED

14(2)(a), 14(2)(d), 19, 49(b), 49(d)

#### PREVIOUS ORDERS CONSIDERED

98, 157, 170, 182, 192, 200, 210, P-250, P-285, P-352, M-46



**ORDER P-400\***  
**APPEALS P-9100293,**  
**P-9100753, P-9101198 AND**  
**P-9200212**

Institution: Ministry of Agriculture and Food

JANUARY 15, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

minutes • third party information  
• commercial • financial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • similar information • no longer  
supplied • competitive position • undue  
loss or gain

The Ministry of Agriculture and Food received a request for access to the minutes of the monthly board meetings of the Ontario Pork Producers Marketing Board for the period April 1990 to "the present time". In June 1991, the same requester made a request for continuing access to the minutes for the next two years. The Ministry responded to the request for continuing access on four separate occasions. Each time, the Ministry notified the marketing board and the board objected to the release of the minutes. Despite the objections, the Ministry decided to release the minutes to the requester, subject to certain severances. The board appealed the Ministry's four decisions, claiming that section 17(1)(a)(b) and (c) of the *Act* applied to the minutes. Subsequently, the Ministry indicated that although it had initially been prepared to release certain parts of the minutes to the appellant, it now wished to deny access to the minutes in their entirety pursuant to section 17(1)(b).

**ORDER**

The Ministry was ordered to release the minutes to the appellant subject to severances made by the Ministry in response to the original request.

In order to qualify for exemption under section 17(1)(b) each part of a three part test must be satisfied.

The minutes in their entirety do not automatically qualify as commercial information solely because the board is engaged in commercial activities. In the Assistant Commissioner's view, only a small portion of the minutes contain information which satisfies the first part of the section 17 test. Much of the information contains administrative details such as attendance lists and approvals of agendas and minutes. Other information consists of accounts of discussions of such topics as preparation for attending a baseball game, the possible creation of a slogan for anniversary celebrations and dress code for attendance at industry functions. The only information which meets the definition of third party information under section 17 is information that relates directly to the actual marketing of pork or pork products or to the discussion of financial matters by the board.

In order to satisfy the requirements of part two of the section 17 test, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. Because the board is required to file copies of minutes with the Commission, the Assistant Commissioner was satisfied that the minutes were supplied to the Ministry. Both the Ministry and the board submit that the information was supplied in confidence implicitly and explicitly. The board acknowledges that there is no written policy on keeping the minutes confidential but states that it is their long standing corporate practice to treat the minutes confidentially. After reviewing the representations, the Assistant Commissioner was satisfied that the minutes were supplied in confidence and the second part of the test was satisfied.

Part three of the section 17 test requires that the parties resisting disclosure present evidence that is detailed and convincing and describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the minutes were released.

Both the Ministry and the board have failed to establish their claims that disclosure of the minutes would result in similar information no longer being supplied to the Commission.

After carefully reviewing the minutes and the representations of all parties, the Assistant Commissioner is of the view that the parties resisting disclosure have failed to establish that release of the minute items which have been found to contain commercial or financial information and to have been supplied in confidence could reasonably be expected to result in any of the types of harms enumerated in section 17(1)(a)(b) and/or (c) of the *Act*.

**SECTIONS CONSIDERED**

17(1)(a)(b) and (c)

**PREVIOUS ORDERS CONSIDERED**

36

**ORDER P-401**  
**APPEAL P-9200340**

Institution: Ministry of Government  
Services

JANUARY 15, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • compiled as part of  
investigation • supplied in confidence  
• relevant to • fair determination of rights  
• presumption of • unjustified invasion of  
• another individual's personal privacy

The Ministry of Government Services received a request for access to "any and all allegations or representations made by a person, persons or group, opposing the leasing of a lot in the City of Gloucester, Regional Municipality of Ottawa-Carleton by the requester with the Ontario Property Administration Section." The record which the Ministry identified as being responsive to the request consists of eight pages. The Ministry gave the requester total access to three pages and denied access to the remaining pages in their entirety pursuant to section 21 of the *Act*. Parts of the record at issue consist of a one page letter to the Ministry and four pages of a Ministry official's notes of his telephone conversations with the author of the letter. The Ministry identified these pages as containing the personal information of the author of the letter and sought his/her consent for their release; however, the author withheld consent. In its representations, the Ministry indicated that its discretion to deny access was exercised under section 49(b).

#### ORDER

The Ministry's decision was upheld.

The appellant has stated that he is not asking for the names of the person, persons or groups but simply the representations and allegations. The Inquiry Officer was of the view that there would be a reasonable expectation that the individuals could be identified from the information remaining after the name, address and telephone number of the author has been severed from the record and, therefore, the record falls within the definition of personal information under subsection 2(1).

A head may refuse to disclose to the individual to whom the information relates personal information where disclosure would constitute an unjustified invasion of another individual's privacy

(section 49(b)). Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of the personal information would result in unjustified invasion of the personal privacy of the individual to whom the information relates. Based on the contents of the records, it appears that the Ministry was engaged in an investigation of an alleged trespass in its capacity as owner of the property and not pursuant to any mandate to enforce the law. Therefore, the provisions of Section 21(3)(b) would not apply.

Both the Ministry and the author submit that Section 21(2)(a) is a relevant consideration. In his representations, the appellant refers to the substance of section 21(2)(d). After reviewing the representations, the Inquiry Officer was satisfied that in the circumstances of this appeal, personal information contained in the record was supplied by the author in confidence and therefore, section 21(2)(h), a factor that weighs in favour of non-disclosure, is a relevant consideration. With regard to section 21(2)(d), the appellant has not identified any legal right nor has he provided any evidence which would indicate that such a right is related to an existing or contemplated proceeding. Therefore, 21(2)(d), fair determination of rights, is not a relevant consideration. None of the other factors under section 21(2) which favour disclosure are present. Therefore, the disclosure of the record to the appellant would constitute an unjustified invasion of the personal privacy of the author of the letter.

#### SECTIONS CONSIDERED

2(1), 21(3)(b), 21(2)(d) and (h), 49(b)

#### PREVIOUS ORDERS CONSIDERED

37, P-230, P-312

## ORDER P-402 APPEAL P-9200221

Institution: Ministry of Health

JANUARY 15, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

application of the Act • *Mental Health Act*  
• clinical record • advice to government  
• solicitor client privilege • personal  
information • presumption of • unjustified  
invasion of • personal privacy

The Ministry of Health received a request for access to all correspondence, letters, memos, documents, notices, etc. about or mentioning the Church of Scientology. The Ministry identified 42 responsive records. The Ministry provided access to 33 records in their entirety, denying access to the remaining 9 records, in whole or in part, pursuant to sections 13(1), 19, 21(1), 65(2)(a) and/or 65(2)(b) of the *Act*.

#### ORDER

The Ministry's decision was partially upheld.

The Ministry claims that the severed portions of Records 1, 4 and 35 fall within the scope of section 65(2)(a) of the *Act*. In order for a record to fall within the scope of section 65(2)(a), it must be in respect of a psychiatric patient and it must be a "clinical record" as defined by section 35(1) of the *Mental Health Act* (*MHA*).

Section 35(1) of the *MHA* defines clinical record as the "clinical record compiled in a psychiatric facility in respect of a patient and includes part of a clinical record." The Ministry severed the names of certain individuals contained in Records 1, 4 and 35. The Ministry feels that because the name of a patient is part of a clinical record, merely confirming



that a person is a patient would violate the *MHA*. The Assistant Commissioner did not accept the Ministry's position regarding the application of section 65(2)(a) to the severed parts of Records 1, 4 and 35. He found that these records were not "compiled in a psychiatric facility" and cannot, therefore, be classified "clinical records". A name alone is not sufficient to bring a record which would otherwise not qualify as a "clinical record" within the scope of the definition. Therefore, the severed portions of Records 1, 4 and 35 (the names) do not fall within the scope of section 65(2)(a). Because the severed portions of Records 1, 4 and 35 appear to contain personal information of individuals other than the appellant, the Assistant Commissioner considered these records under section 21.

The Ministry claims that Record 36 falls within the scope of section 65(2)(b) of the *Act*. In order for a record to fall within the scope of section 65(2)(b), it must satisfy all three parts of a three part test established in Order P-374. The severed portions of Record 36 satisfy the requirements of the first parts of the test: they contain some of the types of information listed in section 65(2)(b) and are in respect of psychiatric patients. However, these portions of the record do not satisfy the third part of the test. Record 36 was created by a policy program analyst at the Mental Health Facilities Branch to inform the Legal Services Branch of certain complaints concerning individual psychiatric patients. The reason for having Record 36 in the custody and control of the Ministry's Legal Services Branch or Mental Health Facilities Branch has no "clinical purpose nature or value". Accordingly, the third requirement of the test has not been established and the severed portion of Record 36 does not fall within the scope of section 65(2)(b) of the *Act*. Because the severed portion of Record 36 appeared to contain personal

information of individuals other than the appellant, the Assistant Commissioner also included it under his discussion of section 21.

The Ministry has claimed section 13(1) of the *Act* applied to the severed portions of Record 5. Generally speaking, advice "pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient in the deliberative process. Recommendations should be viewed in the same vein. Severed portions on page 1 of Record 5 describe the course of action identified by a consultant in the Ministry's Policy Development Branch and recommend its adoption by the Minister. Therefore, these portions of Record 5 qualify for exemption under section 13(1). The Assistant Commissioner reviewed sections 13(2)(a) through (l) and found that none of the exceptions apply in the circumstances of this appeal.

The Ministry claims that section 19 applies to Records 1, 3, 34 and/or the severed portions of Records 1 and/or 4. The institution claims the first part of the common-law solicitor/client privilege is the basis for exempting these records. In order for a record to be subject to the first part of the common-law solicitor/client privilege, the institution must provide evidence that a record satisfies a 4-part test. Records 1, 2, 3, 4 and 34 are written communications between legal advisors and Ministry personnel or their agents, and therefore, satisfy parts 1 and 3 of the test. Having reviewed the records, the Assistant Commissioner found that they are all of a confidential nature and all relate to the seeking formulating or giving of legal advice. Therefore, parts 2 and 4 of the test are also satisfied and the records qualify for exemption under section 19.

The Ministry claimed section 21(1) of the *Act* as the basis for exempting the name of an individual in Record 29. In addition, the Assistant Commissioner determined that information severed from Records 1, 4, 35 and 36 should also be considered under this mandatory exemption.

The name severed from Record 29 in and of itself cannot properly be characterized as any of the types of information listed in section 21(3)(g). The same reasoning applies to the names and other information severed from Records 1, 4, 35 and 36. Therefore, no presumption of an unjustified invasion of personal privacy exist with respect to any of the information contained in these records.

Because none of the factors which weigh in favour of disclosure of the names and other severed portions of the records are present in the circumstances of this appeal, it is not necessary for the Assistant Commissioner to determine whether or not the considerations outlined in sections 21(2)(f) and/or (h), which were raised by the institution, apply to the information severed from the records. Therefore, the mandatory exemption provided by section 21(1) of the *Act* applies to prohibit disclosure of the personal information of individuals other than the appellant which has been severed from Records 1, 4, 29, 35 and 36.

#### SECTIONS CONSIDERED

13, 19, 21, 65(2)(a) and (b)

#### PREVIOUS ORDERS CONSIDERED

118, 161, P-248, P-304, P-348, P-356, P-374, P-389

## ORDER P-403\* APPEAL P-910100

Institution: Ontario Human Rights  
Commission

JANUARY 21, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

law enforcement • investigation • report  
• solicitor client privilege • personal  
information • compiled as part of  
investigation • presumption of  
• unjustified invasion of • another  
individual's personal privacy

The Ontario Human Rights Commission (the OHRC) received a request for access to all records related to a complaint against the requester, including the written complaint, the investigator's notes, the OHRC's counsel's notes and the transcript of the hearing relevant to the complaint. The OHRC granted access to a typewritten version of the complaint and denied access to the remaining records pursuant to sections 14(1)(a) and (b), 14(2)(a) and 19 of the *Act*. Notice that an inquiry was being conducted to review the decision was sent to the OHRC, the appellant, the person who made the complaint and a representative of other individuals named in the records. In its representations, the OHRC also cited exemptions under sections 49(a) and (b) of the *Act*. The representative provided written consent from 6 individuals to disclose any information pertaining to them in the records to the appellant. In addition, the representative consented to disclosure of any information relating to a named police service to the appellant. The appellant narrowed the scope of his request to include only the written complaint; the investigator's notes, including notes taken at a hearing; and the solicitor's notes taken at a hearing.

### ORDER

The OHRC was ordered to reconsider the exercise of discretion with respect to one record. The OHRC's decision with regard to access was partially upheld.

The majority of the pages of the record at issue qualify as personal information of the appellant and other individuals. Some of the pages do not contain personal information of any identifiable individual.

The OHRC submits that sections 14(1)(a) and (b) apply to all of the records at issue. These sections state that a head may refuse to disclose a record where the disclosure could reasonably be expected to interfere with the law enforcement matter (14(1)(a)) or interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result (14(a)(b)).

It is clear that the records were generated in a course of the OHRC's investigation of a complaint under the *Ontario Human Rights Code* which may lead to proceedings before a Board of Inquiry. Because these investigations may lead to proceedings before a Board of Inquiry, they are properly characterized as law enforcement proceedings. The purpose of sections 14(1)(a) and (b) is to provide the OHRC with the discretion to preclude access to records in circumstances where disclosure would interfere with an ongoing law enforcement matter or investigation. Because of the length of time this investigation has been inactive and the nature of the information contained in the records, the Inquiry Officer was not satisfied that disclosure of the records could reasonably be expected to interfere with the law enforcement matter or investigation.

The OHRC submits that the handwritten complaint and the investigator's

notes qualify for exemption under section 14(2)(a). Section 14(2)(a) states that a head may refuse to dispose a record that is a report prepared in the course of law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

In order to properly exempt a record under section 14(2)(a), the OHRC must satisfy each part of a 3-part test. Having reviewed the information contained in these records, the Inquiry Officer was of the opinion that none fall within the definition of report. They do not contain "a formal statement or account of the results of collation and consideration of information". Because the records do not qualify as reports, the discretionary exemption provided by section 14(2)(a) does not apply to these records.

The OHRC submits that section 19 applies to all of the records at issue. Section 19 states that a head may refuse to dispose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

One page of the Human Rights Officer's handwritten notes relate to a conversation with counsel for the OHRC in which legal advice was sought. Because there has been no waiver of confidentiality, the Inquiry Officer found that the requirements of the first part of the first branch of the section 19 exemption have been satisfied with respect to this page.

The handwritten complaint and the remaining handwritten notes of the investigator do not qualify for exemption under either part of the section 19 exemption. These records are not, nor do they make reference to, communications with a legal advisor. In addition,



these records do not relate to the seeking, formulating or giving of legal advice.

The notes taken by the investigator during the hearing are not and do not make reference to confidential communications between a client and a legal advisor. The Inquiry Officer did not accept that this record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

The notes taken by counsel for the OHRC during the hearing were taken to obtain the evidence of the complainant in the event that the complainant was unable to attend a board of inquiry, should one be deemed necessary, due to his deteriorating medical condition.

In the Inquiry Officer's view, the notes taken by counsel for the OHRC represent a record which was prepared by Crown counsel for the purpose of "giving legal advice or in contemplation of litigation or for use in litigation" and therefore, satisfy the second branch of the section 19 exemption.

The OHRC submits that disclosure of the remaining records to the appellant would constitute an unjustified invasion of the privacy of another individual. Because all of the records at issue contain the personal information of the appellant as well as other individuals, they will be considered in the context of section 49(b).

Six of the individuals whose personal information appears in the records have consented to the disclosure of their personal information to the appellant. Accordingly, the disclosure of that information to the appellant would not constitute an unjustified invasion of the personal privacy of these six individuals and section 49(b) does not apply. Because the remaining pages of the records were compiled as part of an

investigation into a possible violation of law, namely the *Ontario Human Rights Code*, the Inquiry Officer found that disclosure of personal information of other individuals appearing in the records would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been met, the Inquiry Officer must consider whether any other provisions of the *Act* come into play to rebut this presumption. Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). None of the circumstances listed in section 21(4) are present.

In his representations, the appellant has not made reference to any of the factors listed in section 21(2) which weigh in favour of disclosure and the Inquiry Officer found that none of these considerations are relevant in the circumstances of this appeal. Therefore it is the Inquiry Officer's view that the presumption of an unjustified invasion of personal privacy has not been rebutted and the records qualify for exemption under section 49(b) of the *Act*. However, in reviewing OHRC's reasons for denying access to the handwritten complaint, the Inquiry Officer was given no indication that the OHRC considered the fact that similar personal information contained in the typewritten complaint was released by the OHRC under the *Act*. Accordingly, the Officer found that the OHRC has not properly exercised its discretion under section 49(b) in respect of the handwritten complaint.

#### SECTIONS CONSIDERED

2(1), 14(1)(a)(b), 14(2)(a), 19, 49(a), 49(b)

#### PREVIOUS ORDERS CONSIDERED

49, 89, 178, 200, 210, P-221, P-253, P-258, P-322

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### ORDER P-404 APPEAL P-9200595

Institution: The Ministry of Health

JANUARY 22, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

compliance investigation • inquiry

The Ministry of Health received a request for access to all records relating to and arising from four compliance investigations which were undertaken by the Office of the Information and Privacy Commissioner/Ontario between May 11, 1992 and June 30, 1992. The investigations were undertaken in response to complaints by the requester. The records consisted of letters, memoranda, notes and telephone messages related to the investigations of the requester's complaints. The Ministry denied access to the records pursuant to the privilege created by section 52(9) of the *Act*. The requester, through his agent, appealed the denial of access and questioned the adequacy of the Ministry's search.

#### ORDER

The Ministry was ordered to disclose the records.

The only issue in the appeal was whether the privilege provided by section 52(9) extends to records created in the course of the compliance investigation undertaken by this office.

In order to discharge the responsibility of ensuring compliance with the privacy protection provisions of the *Act*, the

Office of the Information and Privacy Commissioner/Ontario conducts investigations into compliance matters. These investigations frequently occur as a result of complaints received from members of the public who feel the government has improperly collected, retained, used or disclosed their personal information.

The privilege afforded to records by section 52(9) extends only to records which are supplied or produced in the course of an inquiry by the Office of the Information and Privacy Commissioner/Ontario. The inquiry process is set in motion when an appeal is filed pursuant to section 50(1) by a person who has made an access to information request or a correction of personal information request. A compliance investigation undertaken by the Office of the Information and Privacy Commissioner/Ontario is not an inquiry for the purposes of the *Act* and records which are produced in the course of a compliance investigation are not records produced in the course of an inquiry pursuant to section 52(1). Accordingly, the privilege described in section 52(9) does not extend to the records at issue in this appeal.

In its representations, the Ministry indicated that it has considered all of the exemptions contained in the *Act* and found that none applied. Because the Ministry has not claimed any of the discretionary exemptions, it is not necessary for the Inquiry Officer to consider their application. The Inquiry Officer reviewed the records and, in her view, the mandatory exemptions contained in the *Act* do not apply.

**SECTIONS CONSIDERED**

52(9)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER P-405**  
**APPEAL P-900453**

Institution: Ministry of Consumer and Commercial Relations

JANUARY 28, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • personal privacy  
• law enforcement • confidential source

The Ministry received a request for access to records relating to the Ministry's investigation of the requester's business activities. The Ministry released some records and denied access to others, either in whole or in part, pursuant to sections 14, 17 and 21 of the *Act*.

**ORDER**

The decision of the Ministry was partially upheld.

Some of the records contain personal information of individuals other than the requester. The Ministry submits that disclosure of personal information contained in the records is presumed to constitute an unjustified invasion of personal privacy because it was compiled and is identifiable as part of an investigation into a possible violation of law (section 21(3)(b)). The information was gathered and/or created during the Ministry's investigation of allegations of unfair business practices by the requester's companies under the *Business Practices Act* (the *BPA*). The Inquiry Officer accepted the arguments of the Ministry and found that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) had been satisfied. The record does not contain any information that pertains to section 21(4) which could operate to rebut a presumption under section 21(3). There is no combination of factors under

section 21(2) which favours disclosure of the record in the circumstances of this appeal. Therefore, the records are properly exempt.

The Ministry also claims that certain portions of the record qualify for exemption under section 14(1)(d), which allows the head to refuse to disclose a record where the disclosure could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter.

In order for record to qualify for exemption under this section that matter to which the record relates must relate to law enforcement. The *BPA* provides that any individual or corporation is subject to a penalty if found guilty of engaging in an unfair business practice. Therefore, the investigative process under the *BPA* satisfies the requirements of the definition of law enforcement. Investigations that are conducted under the authority of the *BPA* lead or could lead to proceedings in a court or tribunal where a penalty or sanction could be imposed. In order to establish confidentiality under section 14(1)(d) of the *Act*, the Ministry must provide evidence of the circumstances in which the information was given. The Ministry provided the description of these circumstances and also a description of law enforcement process under the *BPA* and its practices in conducting such investigations. The Inquiry Officer found that in the circumstances of this appeal, disclosure of the records could reasonably be expected to disclose the identities of confidential sources of information. Therefore, the records qualify for exemption under section 14(1)(d).

**SECTIONS CONSIDERED**

14(1)(d)

**PREVIOUS ORDERS CONSIDERED**

20



## ORDER P-406 APPEAL P-9200306

Institution: Stadium Corporation of Ontario Limited

JANUARY 29, 1993

(COMMISSIONER WRIGHT)

### KEYWORDS

fees • estimate • notice to parties by head  
• content of decision letter • interim notice

The Stadium Corporation of Ontario Limited (SkyDome) received a request for access to any 1990 and 1991 consultant reports. SkyDome responded with a fee estimate in the amount of \$150. The requester appealed the fee estimate. The sole issue for the Commissioner to determine was whether SkyDome properly discharged its obligations under the *Act* when responding to the appellant's request.

### ORDER

SkyDome was ordered to issue a final decision letter within 20 days.

In the vast majority of cases, when in receipt of a request, institutions will respond with a decision letter regarding access and a fee estimate, if any, within 30 days of receipt of the request. Only in certain limited circumstances will the institution be permitted to rely on section 27 (a time extension) or issue an interim notice of decision. In the circumstances of this appeal, the letter by SkyDome in response to the request does not appear to conform with any of 3 possible types of responses. SkyDome's decision letter and its representations did not provide sufficient evidence for the Commissioner to conclude that SkyDome finds itself in a situation which would support the use of section 27 or an interim notice. The Commissioner found that the requirements of section 26 apply, and upon receipt of the request SkyDome

should have issued a final decision on access to the appellant within 30 days of receiving the request.

The Commissioner pointed out that a number of previous orders have discussed requirements for the content of a final decision letter. A copy of the June 1992 issue of *IPC Practices*, which dealt with the requirements of a proper decision letter, was enclosed with a copy of the order sent to SkyDome.

### SECTIONS CONSIDERED

26, 27, 29(1)(b)

### PREVIOUS ORDERS CONSIDERED

81, 154, P-324

## ORDER P-407 APPEAL P-9200160

Institution: Ministry of the Attorney General

JANUARY 29, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • personal privacy  
• solicitor client privilege

The Thunder Bay Police Force received a request for access to information related to an investigation of an assault allegation arising from an incident which occurred in 1987. The police determined that the records responsive to part of the request would be held by the Ministry of the Attorney General. Accordingly, the police transferred this part of the request to the Ministry. The Ministry responded to the request by granting access to several records and denying access to others, either in whole or in part, pursuant to sections 13, 19 and 49(a) of the *Act*.

### ORDER

The decision of the Ministry was upheld.

All of the records, with the exception of one severance, contain the personal information of the requester and his mother, the victim of the alleged assault. This one severance contains the address and telephone number of an individual whose name has already been disclosed to the appellant. This information is personal information of that individual only.

Section 49(a) of the *Act* gives the head discretion to refuse to disclose to the individual to whom the information relates, personal information where sections 13 or 19 would apply.

The Ministry claims that section 19 applies to all the records. In order to qualify under Branch 2 of the section 19 exemption, two criteria must be satisfied. The record must be prepared by or for Crown counsel and the record must have been prepared for use in giving legal advice, or in contemplation of litigation or for use in litigation. The records consist of correspondence between various Crown attorneys in the context of a review of a decision not to lay charges pertaining to the alleged assault. In the Inquiry Officer's view, all the records satisfy the requirements for exemption under Branch 2 of the section 19 exemption.

Section 21(1) of the *Act* prohibits the disclosure of personal information of one individual to another individual, unless the disclosure does not constitute an unjustified invasion of personal privacy (section 21(1)(f)). The personal information of the individual other than the requester was compiled by the police in the course of an investigation pursuant to the *Criminal Code* and, therefore, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established. None of the circumstances outlined in section 21(4) operate to rebut the presumption. In addition, there is no combination of

factors listed in section 21(2) which will operate to rebut the presumption. Therefore, disclosure of the information would result in an unjustified invasion of personal privacy.

#### SECTIONS CONSIDERED

13, 19, 21, 49(a)

#### PREVIOUS ORDERS CONSIDERED

210

### ORDER P-408

#### APPEAL P-9200696

Institution: Ministry of Housing

FEBRUARY 10, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

third party information • tender or bid  
• commercial • "supplied" • "in confidence" • reasonable expectation of  
• harm • competitive position

The Ministry received a request for access to unit prices of the successful bidders in a specific tender call for the supply of cleaning and janitorial materials to the Ministry. The Ministry granted access to the names of the three successful bidders and the total contract prices, but refused access to unit prices of specific items, claiming sections 17(1)(a) and (c) of the *Act*. The requester appealed the decision. The record consists of the following information: an itemized list of products; a description of each item on the list; the unit cost of each item on the list.

#### ORDER

The decision of the Ministry was upheld.

For a record to qualify for exemption under section 17(1)(a) or (c), the Ministry or the companies supplying the bids must satisfy each part of a 3-part test.

The information contained in the records relates to the sale and purchase of goods

and outlines the companies' offers to supply the Ministry with the janitorial and cleaning products at a specific unit price. This information is commercial and meets the first part of the test.

The Ministry provided information about its tendering process and stated in its representations that it has always been the policy and practice of the Ministry to treat unit price quotations as confidential. Therefore, the information was supplied in confidence and the second part of the test is met.

One of the companies that submitted a bid stated that its relationship with its own suppliers could be significantly prejudiced if purchase arrangements become public information. The company negotiated special prices for this contract and as a result the Ministry obtained the benefit of lower prices. The company's suppliers provided the special prices in confidence and under the agreement that they would not be revealed. The Ministry argued that in the hands of a competitor, the unit price information would present an economic advantage in the competition for future business contracts because the competitor would be in the position to adjust their prices or under bid in order to present more attractive bid offers.

After reviewing the representation of the parties and the contents of the records, the Inquiry Officer was satisfied that there was sufficient evidence to indicate that disclosure of the records could reasonably be expected to significantly prejudice the competitive position of the companies which submitted bids. Therefore, all 3 parts of the test were made and the mandatory exemption provided by section 17(1)(a) applied.

#### SECTIONS CONSIDERED

17

#### PREVIOUS ORDERS CONSIDERED

36

### ORDER P-409

#### APPEAL P-9200293

Institution: Stadium Corporation of Ontario

FEBRUARY 10, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

fees • estimate

Stadium Corporation of Ontario Ltd. (SkyDome) received a request for access to certain agreements and related records referred to in a November 14, 1991 announcement made by SkyDome. SkyDome advised the requester that an estimated fee of \$360 was being charged for manual search time required to process the request and asked the requester to pay a deposit of \$180 before the request would be processed. The requester appealed SkyDome's decision regarding the fee estimate and asked for any fee to be waived.

#### ORDER

The Assistant Commissioner did not uphold SkyDome's decision to charge a fee for processing the appellant's request. SkyDome was ordered to provide a proper decision letter in response to the appellant's original request within 15 days of the date of the order.

In its representations, SkyDome merely stated that the \$360 represented "time spent manually searching for the record in addition to two hours at a rate of \$7.50 for each additional 15 minute spent".

In the Assistant Commissioner's view, the evidence provided by SkyDome in support of its fee estimate is not sufficient to substantiate its claim. SkyDome's rep-



resentations contain no explanation regarding where the search was held, the volume of the records or other factors which would enable the Assistant Commissioner to determine if the fee is in accordance with the provisions of section 57(1)(a). The Assistant Commissioner found that the amount of the estimated fee does not comply with the requirements of section 57(1)(a) and that SkyDome is precluded from charging any fee for processing the appellant's request.

#### SECTIONS CONSIDERED

57(1)(a)

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER P-410

#### APPEAL P-9200430

Institution: Ministry of Consumer & Commercial Relations

FEBRUARY 12, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

law enforcement • investigation • report

The Ministry of Consumer & Commercial Relations received a request for access to a copy of a 1989 report filed by the Cemeteries Branch of the Ministry regarding the Fort Erie Cemetery. The Ministry provided access to two pieces of correspondence, and denied access to other records claiming section 14(2)(a). The undisclosed records consist of two internal memoranda. The first memorandum is from an investigator in the Ministry's Investigations and Enforcement branch to the acting manager of the branch concerning an investigation of alleged irregularities at the Fort Erie Cemetery. The second memorandum is dated approximately 2 years later and is from the same investigator to the manager of the branch and is a summary of the first memorandum.

#### ORDER

The decision of the Ministry was upheld.

The Ministry submits that it has the discretion not to disclose the records because they are reports prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law (section 14(2)(a)). In order for a record to qualify for exemption under section 14(2)(a), the Ministry must satisfy each part of a 3-part test. Each record qualifies as a report as it consists of summaries of the investigation of alleged violations of the *Cemeteries Act*, findings of fact by the investigator, conclusions about the validity of complaints and recommendations as to the alternatives to deal with the matter. Further, the records were prepared in the course of investigations conducted pursuant to the *Cemeteries Act* for the purpose of determining if grounds existed for prosecution under the *Cemeteries Act*. In addition, the records were prepared by an investigator with the Investigations and Enforcement branch of the Ministry which has the function of enforcing and regulating compliance with the *Cemeteries Act*. Therefore, all parts of the 3-part test are met and the records qualify for exemption pursuant to section 14(2)(a) of the *Act*.

#### SECTIONS CONSIDERED

14(2)(a)

#### PREVIOUS ORDERS CONSIDERED

200

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### ORDER M-66

#### APPEAL M-9200113

Institution: The Township of Flos

NOVEMBER 26, 1992

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

fees • fee waiver • regulations

The Township received two requests for access to records. The first request was duplicated in the second request which consisted of seven parts. The second request was for access to records regarding roads, building permits, properties, property owners, township council members, records of the requesters meeting with the council and correspondence regarding the requester. The Township charged a fee of 40 cents for photocopying responsive records. In response to one part of the second request, the Township issued a fee estimate of \$190 for a search time and photocopying responsive records. The requester asked for a waiver of fees on the grounds that a waiver would be in the public interest. The Township denied the appellants request for a fee waiver. The requester appealed the Townships calculation of the fees and the decision not to waive the amount of the fees.

#### ORDER

The Township's decision was upheld.

The Township is entitled to charge fees for costs incurred in circumstances outlined in section 45(1). The search charge has been calculated in accordance with section 6(3) of regulation 823 and is authorized under section 45(1)(a). In accordance with section 6(1) of regulation 823 and section 45(1)(b), the Township is authorized to charge 20 cents per page for photocopying.

The appellant has not demonstrated that there will be any benefit to the public and, in particular, no benefit to public health and safety, by the dissemination of records relating to a property matter. Therefore, the appellant has not discharged the burden of proving that the Township's decision not to waive the fee under 45(4) of the *Act* was not in accordance with the terms of the *Act*.

**SECTIONS CONSIDERED**

45(1), 45(4)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER M-67**

**APPEAL M-910446**

Institution: The Metropolitan Toronto and  
Regional Conservation Authority

DECEMBER 2, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

economic or other interests

The Conservation Authority (the Authority) received a request for access to information regarding groups of 100 or more persons that have had parties, picnics or other corporate functions in the past three years at the Authority's recreational facilities. The Authority denied access to all responsive records claiming sections 11(c) and (d) of the *Act*. During mediation, the appellant agreed to narrow his request to certain information from picnic permits, namely, the company names and addresses and expected number of attendees for permits issued to corporate groups of 100 or more for the years 1989, 1990 and 1991. The parties agreed to proceed by way of a representative sample.

**ORDER**

The decision of the Authority was upheld.

The Authority is a corporate body constituted under the *Conservation Authority Act* of Ontario, empowered to operate recreational and other park facilities for the benefit of the public. Funding for its recreational activities comes directly from admission charges and other revenues raised during the course of operating the facilities. Although these activities are subsidized by local municipalities, the

Authority must rely increasingly on the additional revenues it generates in the various recreational areas and facilities from food services, gift shops and fees for various educational programs.

The fact that the appellant is providing different services from those offered by the Authority is not determinative. The portions of the record sought by the appellant are, in effect, a mailing list of the Authority's corporate clients, and as such, have an intrinsic value to the Authority. This information is essential to the Authority's marketing and promoting of its services and is used to generate income. There can be no guarantee that the list, once released, would not be sold or passed on to other companies or individuals that are in direct competition with the Conservation Authority. Therefore, disclosure could reasonably be expected to prejudice the economic interest of the Conservation Authority and the records are properly exempt from disclosure pursuant to section 11(c) of the *Act*.

**SECTIONS CONSIDERED**

11(c)

**PREVIOUS ORDERS CONSIDERED**

M-27, M-37

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**ORDER M-68**

**APPEAL M-920091**

Institution: The Metropolitan Toronto  
Police

DECEMBER 2, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

police records • personal information  
• criminal history • refusal to confirm or  
deny existence of record • compiled as part  
of investigation • highly sensitive • public  
record • presumption of • unjustified  
invasion of • personal privacy

The Police received a request for access to information regarding the existence of criminal records for four individuals. The Police refused to confirm or deny the existence of any responsive records pursuant to section 14(5) of the *Act*.

**ORDER**

The decision of the Police was upheld.

A record of the nature requested by the appellant, if it exists, would contain the criminal history of four identifiable individuals and clearly qualifies as personal information of these individuals as defined by section 2(1) of the *Act*.

Simply confirming the existence of any responsive records could reveal personal information about an identifiable individual in the circumstances of this appeal. The record of a criminal conviction is not information which is compiled as part of an investigation; rather it is a result of either a guilty plea or a conviction by a court, which by their very nature are events which take place after any investigation has been completed. Therefore, a responsive record, should it exist, would not satisfy the requirements of section 14(3)(b). Because none of the other types of information listed in section 14(3) would apply, there is no presumed unjustified invasion of personal privacy. The appellant has not provided sufficient evidence to establish that disclosure of the criminal record of an individual, if it exists, would promote public health and safety (section 14(2)(b)). The existence of a criminal record is properly considered as "highly sensitive" and section 14(2)(f) is a relevant consideration. Therefore, the disclosure of the criminal record of an individual, if it exists, would constitute an unjustified invasion of the personal privacy of the person to whom the information relates.



Although the existence of a particular criminal conviction is a matter of public record, and this fact would have been disclosed to the public during a trial or a plea taken in open court, it does not necessarily follow that this information should be freely and easily available to anyone who asks. The appellant might, through diligence and investigation, be able to determine if any of the individuals named in her request do have a criminal record. However, this does not mean that an easily retrievable computerized record of all criminal convictions, if it exists, should be disclosed to the appellant.

The Police have provided sufficient evidence to establish that disclosure of the existence or non existence of a criminal record of the four individuals would constitute an unjustified invasion of their personal privacy.

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**SECTIONS CONSIDERED**

14(5), 14(3)(b), 14(2)(b), (f)

**PREVIOUS ORDERS CONSIDERED**

P-339, 180

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**ORDER M-69****APPEAL M-9200016**

Institution: The Township of Bagot and Blythfield

DECEMBER 2, 1992

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

advice to government • feasibility study  
• field research • severance • public interest  
override • solicitor client privilege

The Township received a request for access to records relating to the requester's company in relation to its application for development approval. The Township granted partial access to the record denying access to part of the record

pursuant to section 6(1)(b), 7(1) and 12 of the *Act*.

**ORDER**

The Township's decision was partially upheld.

In its representations, the Township has not cited or made reference to the application of section 6(1)(b) to any part of the record. Therefore, this exemption will not be considered in the context of the appeal.

Harm to the competitive position of the Township should be addressed by a claim pursuant to section 11 of the *Act*, not section 10. The Township did not identify any page of the record disclosure of which might harm its competitive position and, accordingly, neither section 10 nor 11 will be considered.

The Township did not make reference to the application of an exemption for certain pages of the record. As no mandatory exemption under the *Act* applies, these pages should be disclosed to the appellant.

Some parts of the record consist only of factual background information and contain no suggested course of action. Therefore, those pages do not qualify for exemption under section 7(1). The remaining pages would reveal the advice and recommendations of consultants retained by the Township. Any factual information contained in these pages is so interwoven with the advice and recommendations that it cannot reasonably be severed pursuant to section 4(2) of the *Act*. Because nothing in the record leads to the conclusion that, in aggregate, it constitutes a "feasibility study or other technical study", section 7(2)(f) and (g) do not apply to any of the remaining pages.

In the circumstances of this appeal, there is no compelling public interest sufficient to outweigh the purpose of section 7(1) of the *Act*.

Not all communications between a legal advisor and his/her client are privileged. Some pages of the record qualify for exemption under section 12 having met all parts of the first test of branch one (common law solicitor-client privilege). None of the requirements for the second test (litigation privilege) have been met. The second part of the branch two test has not been met. The pages were not prepared in contemplation of or for use in litigation.

**SECTIONS CONSIDERED**

10, 11, 7(1), 12

**PREVIOUS ORDERS CONSIDERED**

49, 118, P-348, P-352, P-332, M-2, M-6, M-7, M-19

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**ORDER M-70****APPEAL M-9200244**

Institution: The City of Etobicoke

DECEMBER 7, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

law enforcement • confidential source

The City received a request for access to the name of the individual or individuals who filed a complaint with the City regarding property owned by the requester, as well as the details of the complaints. The City granted access to the responsive record, subject to the severance of the names of any complainants, pursuant to section 8(1)(d) of the *Act*.

**ORDER**

The decision of the City was upheld.

Orders M-4, M-16, M-20, M-31 and M-43 all dealt with requests to a municipality for the same type of information. In those orders, the decision to deny access to the name of the complainant, pursuant to section 8(1)(d) of the *Act* was upheld. In each case, it was found that the City's process of by-law enforcement qualified as "law enforcement" and there was a "reasonable expectation of confidentiality within the institution's process of by-law enforcement".

The appellant was provided with a copy of Order M-4, and did not identify any circumstances or raise any arguments which would distinguish this appeal from the others.

#### SECTIONS CONSIDERED

8(1)(d)

#### PREVIOUS ORDERS CONSIDERED

M-4, M-16, M-20, M-31, M-43

### INTERIM ORDER M-71 APPEAL M-910422

Institution: Nipissing Board of Education

DECEMBER 10, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

agent • personal information

- employment history • refusal to confirm or deny existence of record • meeting
- absence of the public • *Education Act*
- discretion

The Nipissing Board of Education received a request from an individual acting as his wife's agent, for access to four Board motions relating to his wife. The wording of the request was very specific and asks that the Board inform the requester if no such motions exist. The Board responded that it could only process the request for access to personal information from the individual to whom the information relates. However the

Board also went on to state that any responsive records were exempt under sections 6(1), 7(1) and 12 of the *Act*. The requester's wife appealed the decision.

#### ORDER

The Assistant Commissioner disclosed the existence of the records which, are responsive to the appellant's request and upheld the Board's decision that the records qualify for exemption under section 6(1)(b) of the *Act*. The Assistant Commissioner ordered the Board to properly exercise its discretion under section 38(a) and to provide further representations concerning this exercise of discretion.

Proper authorization to act as agent in a situation where personal information has been requested is a legitimate concern both for the Board and the Commissioner's Office. The *Act* does not prohibit an individual from using an agent, nor does it require that authorization to act as agent be provided in a specific form. It is the Board's responsibility to take whatever steps are required to confirm that a person who purports to be acting as agent for another individual has the authority to act in this capacity. The Board has an obligation under section 21 of the *Act* to notify the individual whose personal information is at issue and provide him or her with an opportunity to provide representations prior to any decision regarding disclosure being made. In the circumstances of this appeal, a written authorization from the requester's wife was provided to the Board. If the Board was not satisfied with this evidence of agency, it could have taken steps to confirm the authorization. For the purposes of the appeal, the Assistant Commissioner felt that he had been provided with sufficient evidence to establish that the appellant's husband was duly authorized to act as her agent.

In responding to the request, the Board did not raise section 22(b); rather, it made an objection regarding the status of the requester and went on to raise sections 6, 7 and 12 of the *Act* as grounds for denying access. The Board's concern regarding confirmation of the existence of records was not raised until the inquiry stage of the appeal and has never been communicated to the appellant as required by section 22(2).

The Board has not claimed either section 8 or 14 as the basis for denying access and these are the only exemptions contained in the *Act* which entitle an institution to refuse to confirm or deny the existence of records. The Board's attempt to refuse to confirm or deny the existence of the records must fail and the Assistant Commissioner confirmed that the records exist which are responsive to paragraphs two and four of the request and that no records exist which are responsive to paragraphs one and three.

The information contained in both records relates to the appellant's previous employment with the Board and as such qualifies as the personal information of the appellant under section 2(1) of the *Act*. Both records satisfy the requirements of the test for exemption under section 6(1)(b). The records make reference to the fact that meetings of the Committee of the whole Board of Education took place. Section 207(2)(e) of the *Education Act* authorizes the Committee of the whole Board to meet in camera when the subject matter under consideration involves litigation; the minutes establish that the issues under consideration of the two meetings involve litigation between the Board and the appellant. The content of the minutes establish that disclosure of the records would reveal the actual substance of deliberation of this in camera meeting. Because the Assistant Commissioner



found that the contents of the record qualify as personal information of the appellant and that both records qualify for exemption under section 6(1)(b), section 38(a) gives the Board the discretion to exempt the records from disclosure.

A proper exercise of discretion under section 38(a) must be made in full appreciation of the facts of the case and upon application of proper legal principles. Provided that discretion has been exercised in accordance with established legal principles it should not be disturbed on appeal.

#### SECTIONS CONSIDERED

22(2), 2(1), 6(1)(b), 38(a)

#### PREVIOUS ORDERS CONSIDERED

M-64, 58, P-344

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### ORDER M-72

#### APPEAL M-920014

Institution: The Corporation of the Township of Orillia

DECEMBER 17, 1992

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The Township received a request for access to the building permit for a boat-house. The Township granted access to a number of records, including a building permit for the renovation of the boat-house. The requester sought access to the original building permit. The Township advised the requester that the original building permit did not exist.

#### ORDER

The Township's search was reasonable in the circumstances.

In its representations, the Township outlines the steps taken by its employees to locate the requested records, including: a search of the computerized records management system of current records, which includes all building permits; a search of the computerized records management system of all destroyed files, which includes building permits; a visual review of all existing building permits; a review of all "building permit reports" submitted to the council from 1985 to 1988; a review of the "file destruction reports" for all records destroyed between 1974 and 1979; and a review of the "file destruction reports" for all records destroyed between 1979 and 1990.

Additional searches were conducted by the Township's Deputy Clerk and the Records Clerk who were unable to find any indication of the issuance of a building permit to construct about house on the property. The steps taken were verified by affidavit evidence which describes the search in detail and provides supporting documentary evidence.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-73

#### APPEAL M-9200282

Institution: Niagara Regional Board of Commissioners of Police

DECEMBER 21, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The Police received a request for information regarding "why [a named individual] was not charged with possession when she was found not only in posses-

sion of my stolen belongings, but wearing items stolen from our home in August 1987?" The Police responded that access could not be provided because no report of the individual being in possession of the property had been filed with the Police.

#### ORDER

The Police search for records was reasonable in the circumstances.

The Police provided a sworn affidavit which outlines the steps taken to locate any responsive records, including: various searches of the Police online records access database; searches of various incident reports which might have been relevant; and conversations with Officers responsible for the 1987 investigation.

Any hard copy records relating to a break in investigation such as the one at the appellants premises would have been destroyed, in accordance with the records retention by-law applicable to these types of records.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-74

#### APPEAL M-9200298

Institution: Thunder Bay Police Services Board

DECEMBER 29, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record • record does not exist

The Thunder Bay Police Services Board received a request in which the requester wanted to know "how many times [a named individual was] charged with theft,

assault, etc. etc. from 1970 - 1989". The request indicated that there were two possible spellings of the individual's name and that the individual referred to was deceased. The Police responded that access could not be granted because no records exist for the time period indicated in the request.

#### ORDER

The Police search for the records was reasonable in the circumstances.

The Police provided a sworn affidavit which outlines the steps taken to locate any responsive records in its custody and control. These steps included searching the Police index cards, searching certain on-line databases and searching of hard copy records. The Police indicate that the searches were made for any incidents where the named individual was listed as charged under either of the two names provided by the appellant. The affidavit identifies that searches fail to produce any responsive records.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

### ORDER M-75 APPEALS M-910167 AND M-910217

Institution: Metropolitan Toronto Police

DECEMBER 29, 1992

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • compiled as part of investigation • unjustified invasion of  
• another individual's personal privacy  
• law enforcement • report

The Metropolitan Toronto Police Services Board received a request for access to "such information to which I might be

entitled under the *Municipal Freedom of Information and Protection of Privacy Act*." The requester supplied his name, date and place of birth, social insurance number and the name of the company he owned. The same requester submitted a second request to the Public Complaints Commissioner (the PCC) for access to any information relating to a complaint he had filed with that organization. The second request was transferred by the PCC to the Police pursuant to section 18(3) of the *Act*.

All pages of the record relating to appeal M-910217 are also included in appeal M-910167, with the exception of one page. Therefore, the two appeals have been combined. 113 pages were released to the requester in their entirety, access to the remaining pages was denied, in whole or in part, pursuant to section 8 and section 14 and 38 of the *Act*.

Part of the record contained a number of indicators which suggest that the report had already been released to the appellant, including a notation on the bottom of the final report that includes the appellant on the distribution list for the report. Therefore, these pages do not qualify for exemption and should be disclosed to the appellant in their entirety.

The records consist of notes, letters, a computer printout, "reports", forms, excerpts from Police Officers' notebooks and an officer complaint summary. All of the records relate to a complaint made by the appellant to the Police regarding a threatening telephone message he received and a subsequent complaint made by the appellant to the PCC about the conduct of the Police Officer in charge of the investigation.

#### ORDER

The decision of the Police was partially upheld.

All of the pages at issue contain personal information of either the appellant, one or more of the affected persons, or both the appellant and one or more of the affected persons. Section 38 provides a number of exceptions to the general right of access found in section 36 of the *Act*. If the Police determine that release of the information would constitute an unjustified invasion of the affected persons personal privacy, section 38(b) gives the Police the discretion to deny the appellant access to his own personal information.

Sections 14(2) and 14(3) of the *Act* provide guidance in determining whether the disclosure of the personal information contained in the record would constitute an unjustified invasion of personal privacy. All except three pages of the record were compiled and are identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). Therefore, the presumption of an unjustified invasion of personal privacy applies. No combination of factors listed in section 14(2) would operate to rebut the presumptions. One affected person has consented to the disclosure of her personal information. Because no provisions of section 8 have been claimed by the Police as the basis for exempting this information, it should be released to the appellant in its entirety. The information which relates to the appellant only does not qualify for exemption under section 8(2)(a), therefore, the exemption provided by section 38(a) of the *Act* is not available. Personal information of individuals other than the requester and the affected person was not disclosed.

#### SECTIONS CONSIDERED

8, 14, 38

#### PREVIOUS ORDERS CONSIDERED

M-12, M-52



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## ORDER M-76 APPEAL M-910244

Institution: City of Peterborough

JANUARY 7, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

reasonable steps to locate record • record  
does not exist

In November, 1992, Assistant Commissioner Mitchinson issued Interim Order M-59 in respect of this appeal. This order is the Assistant Commissioner's final order and addresses all matters which were unresolved at the time of the issuance of Interim Order M-59.

The appellant originally requested access to a copy of the entire correspondence and inspection files and any other correspondence in the possession of the City of Peterborough regarding a named address, including the dates and times that a named Fire Prevention Officer inspected and visited the address. The City disclosed 14 responsive records to the appellant. The appellant was not satisfied with this response and appealed the City's decision claiming that additional records should exist. In Interim Order M-59 the Assistant Commissioner ordered the City to provide him with an affidavit attesting to the records which were released to the appellant and the nature of the searches conducted to determine whether additional responsive records exist. The City issued a decision with respect to 53 pages of notes and diary entries of Fire Prevention Officers disclosing all parts of these records which were responsive to the request. The only remaining issue is whether or not the City's search for additional records was reasonable in the circumstances.

### ORDER

The search conducted by the City was reasonable in the circumstances.

The City submitted a sworn affidavit by the employee who conducted the searches for additional responsive records. The affidavit outlines the scope of the various searches, which included a manual search of all relevant files to the Fire Department Offices and various consultations with city employees who would be familiar with the matter.

### SECTIONS CONSIDERED

None

### PREVIOUS ORDERS CONSIDERED

None

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## ORDER M-77\* APPEAL M-9200210

Institution: The Corporation of the  
Township of Maidstone

JANUARY 21, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

economic or other interests • plan

The Township of Maidstone received a request for a copy of a report prepared by a consulting firm relating to the township staffing systems. The Township denied access to the record in its entirety claiming section 11(f) of the *Act*. The requester appealed the Township's decision.

### ORDER

The Township was ordered to disclose portions of the record which do not contain personal information.

Section 42 of the *Act* states that where an institution covered by the *Act* denies access to a record or part of a record, the burden of proof that the record or part falls within one of the specified exemptions lies upon the institution. The Township has given no reasons and provided no evidence in support of its claim that the exemption applies to the record.

It has merely provided a blanket assertion that an exemption applies, without facts or arguments to support the claim. In Inquiry Officer Seife's view, this was not sufficient to discharge the burden of proof. In the absence of representations from the Township, Inquiry Officer Seife examined the record itself. The record did not contain the sort of detailed method, scheme or design that are characteristic of a plan. Establishing that the record contains a plan is the first part of three part test which must be met in order to qualify for exemption under section 11(1)(b). Because the record does not contain a plan or plans, the exemption found in section 11(f) does not apply.

### SECTIONS CONSIDERED

11(f)

### PREVIOUS ORDERS CONSIDERED

P-229

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## ORDER M-78 APPEAL M-9200265

Institution: Collingwood Police Services  
Board

JANUARY 22, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

police records • law enforcement • report

The Collingwood Police Services Board received a request for access to a copy of a report written by the Durham Regional Police Special Investigation Unit regarding an internal investigation of the Collingwood Police Service. The Board denied access to the information pursuant to section 14(1) of the *Act*. During mediation the Board claimed additional exemptions under section 7(1), 8(2) and 12 of the *Act*.

### ORDER

The Board's decision was upheld.

In order to qualify for exemption under section 8(2)(a) a record must satisfy each part of a three part test.

There is no dispute that the record is a report which was prepared in the course of law enforcement, inspections or investigations. However, the appellant submits that because the investigation is over and no charges have been laid, there is no reason to believe that making the investigation public would endanger the prosecution of individuals who may have broken the law.

The record meets all three parts of the three part test. Section 8(2)(a) does not require that a report meet additional criteria such as a reasonable expectation of some harm resulting from the disclosure of the report of specifications about the content thereof.

#### SECTIONS CONSIDERED

8(2)(a)

#### PREVIOUS ORDERS CONSIDERED

200

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### ORDER M-79

#### APPEAL M-910306

Institution: Thunder Bay Police Services Board

JANUARY 29, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

police records • personal information  
• reasonable steps to locate record • record does not exist

The son of an individual who was allegedly assaulted by employees of a hospital while she was a patient, requested access to information related to the investigation of the alleged assault. Partial access was granted to portions of the record; access was denied to other portions pursuant to section 14 of the *Act*. The requester appealed the access decision

and also stated that he had not been provided with the original report prepared by a particular police officer. The police took the position that the report does not exist.

#### ORDER

The Inquiry Officer was satisfied that the police search for the report was reasonable. The Police were ordered to disclose the records to the requester.

The names or signatures of various hospital personnel who cared for the requester's mother during the relevant period of time is not personal information, as it is information provided by an individual in a professional capacity or in the execution of employment responsibilities. Because the Police had claimed only section 14 to exempt this information, and a prerequisite for the application of section 14 is that the information is found to be personal information, the information should be disclosed to the requester.

The Police provided affidavit evidence describing their search for the original report which the requester believed existed. The Inquiry Officer found that the searches conducted during the course of processing the request were thorough and reasonable in the circumstances.

#### SECTIONS CONSIDERED

2

#### PREVIOUS ORDERS CONSIDERED

157, P-326, P-328

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### ORDER M-80

#### APPEAL M-9200373

Institution: Halton Board of Education

JANUARY 29, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

The Halton Board of Education received a request for access to the purchase orders for supplying hardware and software to the Adult Computer Training Centre operated by the Board in the Applevue Mall. The Board responded to the request by providing a copy of a purchase order. The requester appealed the Board's decision on the basis that additional records responsive to the request should exist.

#### ORDER

The search conducted by the Board was reasonable in the circumstances.

The Board provided representations as well as an affidavit. The Board identified: all the computer hardware and software acquired for the Adult Training Centre; those products for which purchase order was located and provided to the requester; those products for which purchase orders were never prepared; and those for which purchase orders may or may not have been prepared and the nature of the searches made to locate the purchase orders. The Inquiry Officer found that the Board had taken all reasonable steps to locate any records responsive to the request.

#### SECTIONS CONSIDERED

None

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-81

#### APPEAL M-9200345

Institution: City of Etobicoke

FEBRUARY 2, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

law enforcement • confidential source

The City of Etobicoke received a request for access to the names of the individuals



who had filed a complaint with the City regarding an alleged violation of a City by-law by the requester. The record is a by-law enforcement officer's report which contains the name, address and telephone number of any complainant and the by-law officer's findings regarding the alleged violation. The City granted access to the record subject to the severance of the information relating to the identity of the complainants pursuant to section 8(1)(d) of the *Act*.

#### ORDER

The City's decision was upheld.

Numerous Orders, including M-70 which also involved the City, all dealt with requests for the same type of information. In each Order, the decision to deny access to the name of a complainant, pursuant to section 8(1)(d) of the *Act*, was upheld. In each case, the institution's by-law enforcement process qualified as law enforcement under the *Act* and it was found that there was a reasonable expectation of confidentiality within the process of by-law enforcement. The information in this appeal is identical to the information which was at issue in the appeals which resulted in the previous Orders. In the circumstances of this appeal, the requester did not identify any circumstance or raise any argument which would distinguish his appeal from the others.

#### SECTIONS CONSIDERED

8(1)(d)

#### PREVIOUS ORDERS CONSIDERED

M-4, M-16, M-20, M-32, M-43, M-70

### ORDER M-82 APPEAL M-910344

Institution: Corporation of the City of Hamilton

FEBRUARY 9, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • employment history • evaluations • relevant to • fair determination of rights • highly sensitive • supplied in confidence • presumption of • unjustified invasion of • another individual's personal privacy • third party information

The City of Hamilton received a request for access to records relating to the City's investigation of the requester's complaint of harassment. The City granted access to a number records, however, access was denied to the remaining records pursuant to sections 10(1)(d), 14, 38(b) and (c). The requester appealed the City's decision. Notice that an inquiry was being conducted was sent to two employees named in the complaint as well as 6 individuals whose names appeared in the records.

#### ORDER

The decision of the City was partially upheld.

The records consist of notes, letters and memoranda created during the City's investigation of the requester's complaint. A small portion of the records contain information about other employees who worked in the area where the harassment allegedly took place. This information qualifies as the personal information of those individuals. Primarily, the records contain the personal information of the requester and the two individuals about whom he had complained. Some parts of the record do not contain personal information.

The City claims that disclosure of personal information will be presumed to constitute an unjustified invasion of personal privacy because the information relates to employment or educational history (14(3)(d)) and consists of personal recommendations or evaluations

(14(3)(g)). The Inquiry Officer found that the information which relates to individuals other than the requester cannot accurately be characterized as employment history of any of these individuals. The Inquiry Officer also found that while it could be argued that the comments of the author of the records are "evaluations", it is not possible to characterize them as "personal" or "personnel" evaluations of these individuals. The records were created to determine whether the actions of two individuals were in violation of the City's policy on personal harassment. Therefore, neither section 14(3)(d) or (g) applies and there is no presumption of an unjustified invasion of privacy.

In order for section 14(2)(d) to be considered a relevant factor, the requester must establish that the right in question is a legal right. With the exception of the grievance process, the rights referred to by the requester are not concepts of common or statute law.

The City and the individuals accused of harassment state that the information should not be released because it is highly sensitive (section 14(2)(f) and was supplied in confidence (section 14(2)(h)). Although, the parties involved may find discussion of work place relationships and conduct in relation to an investigation distressing in nature, it is not possible for such an investigation to proceed if the complaint is not made known to the respondent and the direct response to the allegations is not made known to the complainant. Accordingly, the Inquiry Officer found that section 14(2)(f) is only a relevant consideration in respect of information provided by individuals other than the requester and those accused of harassment.

The Inquiry Officer found that section 14(2)(h) is not a relevant consideration

in respect of information provided by the persons accused of harassment in direct response to the requester's complaint. It is neither practical nor possible to guarantee complete confidentiality to the parties during an internal investigation of an allegation of harassment in the workplace. If a party to a complaint is to have any confidence in the process, the respondents in such a complaint must be advised of what they are accused and by whom, to enable them to address the validity of the allegations.

Disclosure of information provided by individuals other than the parties to the complaint would constitute an unjustified invasion of personal privacy and section 38(b) applies. Disclosure of information provided by the requester and the information provided by those accused of harassment in response to the complaint would not constitute an unjustified invasion of personal privacy and section 38(b) does not apply.

The City also argued that it has the discretion to refuse to disclose to the requester information which relates to the requester that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment (section 38(c)). Parts of the record do contain evaluative and opinion material about the requester, however, the Inquiry Officer did not accept that the sole purpose for compiling the information was to determine the requester's suitability, eligibility or qualifications for employment. The only purpose for compiling the information was to investigate the complaint.

The City also argued that it had discretion not to disclose a record that could be reasonably expected to reveal information supplied to resolve a labour relations dispute. The introductory wording of

section 10(1) requires that the information must have been supplied to the City by a third party which by definition is not part of the institution. The City's employees are part of the institution and, therefore, do not qualify as third parties for the purposes of section 10. Although former employees are not part of the institution and might be considered third parties, their interests are more appropriately addressed under the privacy protection provisions of the *Act*.

#### SECTIONS CONSIDERED

2, 10(1)(d), 38(b), 38(c)

#### PREVIOUS ORDERS CONSIDERED

P-312, 157

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### ORDER M-83

#### APPEAL M-910297

Institution: Town of Gravenhurst

FEBRUARY 10, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

advice to government • solicitor client privilege

The Town of Gravenhurst received a request to examine an Ontario Municipal Board (OMB) file regarding a named establishment. The Town granted access to all but seven records and denied access to these records in their entirety pursuant to sections 7(1) and 12. The requester appealed the Town's decision and also raised the possible application of sections 50(2) and 51(1) of the *Act*.

#### ORDER

The Town was ordered to disclose the records.

Section 7(1) of the *Act* grants the head discretion to refuse to disclose a record if the disclosure would reveal advice or recommendation of an officer or an employee of an institution or a consultant

retained by the institution. The record for which the Town claimed section 7 consists of handwritten notes made by the Town's Director of Planning about the Public Works Superintendent's concerns about the subject of the OMB hearing. The other record consists of two zoning analyses and a chronological record of communications between the Town and other persons involved in the hearing. The Town acknowledged that neither record would reveal specific advice or recommendations. Generally speaking, advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. In the Assistant Commissioner's view, neither record contained information which could be properly considered to be "advice".

The Town claimed that notes created by the Town's Director of Planning during the course of the OMB hearing, should be exempt because they are subject to solicitor-client privilege or were prepared for counsel employed or retained by the Town for use in giving legal advice or in contemplation or for use in litigation (section 12). The notes fail to satisfy the requirements for exemption under solicitor-client privilege. There is insufficient evidence to establish that the records were actually communicated between the Town and its legal advisor, nor do the Town's representations established that the records are of a confidential nature. The Town also failed to establish that any of the records were created or obtained for a lawyer's brief. The Town has not provided sufficient evidence to establish that the records were prepared specifically for counsel or that the Town's solicitor used the records in providing legal advice to the Town.

Because none of the records qualified for exemption under the *Act*, it was not



necessary for the Assistant Commissioner to consider the applications of sections 50 and 51.

#### SECTIONS CONSIDERED

7(1), 12

#### PREVIOUS ORDERS CONSIDERED

M-2, M-40, M-52, M-61

### ORDER M-84

#### APPEAL M-9200094

Institution: The Metropolitan Toronto

Police

FEBRUARY 10, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

police records • personal information  
• consent to access • compiled as part of  
investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • another  
individual's personal privacy • law  
enforcement • investigation • report

The Police received a request for access to the record of an investigation of an assault upon the requester at her place of employment. The Police granted partial access to the records. Access was denied to certain information pursuant to sections 8(1)(l), 8(2)(a), 14 and 38(b) of the *Act*. The information severed from the record consists of the name, occupation, business telephone number, gender, race, height, weight, hair colour, eye colour and condition of the person accused of the assault as well as the information provided to the police by that person. The severed information also includes names of witnesses and information provided by one witness and an internal police report classification code.

#### ORDER

The decision of the Police was partially upheld.

The name, occupation, business telephone number, etc. of the person accused of the assault, as well as other information provided by that person, qualify as that person's personal information. The name and occupation of each witness qualifies as the personal information of the witness. The information provided by the witness qualifies as personal information of the witness, the person accused of the assault and the requester.

During the course of the inquiry, the person accused of the assault consented to the release of some of her personal information to the requester. Therefore, section 14(1)(a) applies and the mandatory exemption from disclosure does not apply to the information which that person has consented to disclose. The only parts of the record remaining at issue are the name and occupation of the witnesses, certain information about the person accused of the assault and certain information provided by that person.

The Inquiry Officer was satisfied that the personal information of the person accused of assault and the witness was compiled and is identifiable as part of an investigation and therefore section 14(3)(b) applies. Section 14(4) is not relevant to rebut the presumption in the circumstances of this appeal. The requester submits that disclosure of the information is desirable for the purpose of subjecting the activities of the institution to public scrutiny (section 14(2)(a)). In the Inquiry Officer's view, the requester's personal concerns about the reactions of one police officer are not sufficient to establish the relevance of section 14(2)(a). Although the requester claims the relevance of section 14(2)(c), this section was not intended to weigh in favour of the disclosure of personal information of another individual for the purpose of enabling someone to deter-

mine specialization in the context of legal representation which he or she requires. The requester also states that disclosure of the personal information is relevant to a fair determination of her rights. However, the requester has provided no information which indicates that the personal information she is seeking access to may have some bearing on the determination of the rights in question or is required to prepare for the proceeding or to ensure an impartial hearing. Therefore, section 14(2)(d) is not a relevant consideration. Accordingly, the presumption of an unjustified invasion of personal privacy is not rebutted.

The Police claim section 38(b) for those parts of the record which contained the personal information of the witnesses, the person accused of the assault and the requester. Because personal information was compiled and is identifiable as part of an investigation into a possible violation of law, the requirements for presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied. The requester raised the same arguments with regard to this information, and for the same reasons, the Inquiry Officer found that the presumption of an unjustified invasion of personal privacy had not been rebutted.

The Police submitted that they have the discretion to refuse to disclose a record that is a report prepared in the course of law enforcement (section 8(2)(a)). In order to qualify for exemption under section 8(2)(a), a record must satisfy each part of a 3-part test. Because the pages for which the Police have claimed this exemption were prepared by a police officer in the course of his investigation of an alleged criminal event and consists of a formal statement or account of the results of the coalition and consideration of information. The requirements of the test have been met.

**SECTIONS CONSIDERED**

2, 14, 38(b), 8(2)(a)

**PREVIOUS ORDERS CONSIDERED**

M-28, P-312, M-12, 200

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**ORDER M-85**

**APPEAL M-9200434**

Institution: The London Police Force

FEBRUARY 12, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

record • creation not required • reasonable steps to locate record

The Police received a request for access to information relating to an allegation that the requester's client was improperly in possession of a firearm. The requester indicated in his request that he was informed by an Ontario Provincial Police (OPP) officer that a named member of the Police "was the source for the recent complaint" and asked the Police to provide him with the information and documentation in support of this complaint. The Police advised the requester that the officer had made no written report about the incident but rather he had relayed the information he had received from a confidential informant to the police agency responsible for the jurisdiction, namely, the OPP. The requester appealed the Police's decision. During the appeal, the requester took the position that the Police are required to provide him with the information he is seeking despite the fact that no written record of the incident was made by the officer, i.e. that the officer knows the name of the complainant but has not recorded it.

**ORDER**

The decision of the Police was upheld.

The word record is defined in section 2(1) of the *Act* as follows: "record" means any record of information however recorded, whether in printed form, on

film, by electronic means or otherwise, and includes,

(a)correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial graphic or work, a photograph, a film a microfilm a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(b)subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institutions by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document").

The *Act* does not impose a specific duty on an institution to transcribe oral views, comments or discussions and it does not require an institution to produce information from an individual's memory or knowledge.

In his request, the requester asked for access to information relating to allegations that had been made against him. He was informed both by the Police and from the Information and Privacy Commissioner's office that a record responsive to his request existed in the custody or under the control of the OPP but the appellant continue to ask that the Police be required to create a record.

In the Inquiry Officer's view, there is no statutory obligation on the Police to respond to the request in any way different from the way they did. Although, the Police upon initially receiving the request should have forwarded it to the OPP, he found that the actions of the police in responding to the request were reasonable and satisfactory in the circumstances.

**SECTIONS CONSIDERED**

2

**PREVIOUS ORDERS CONSIDERED**

M-33, 99

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*\* An application for judicial review has been brought in respect of each of the following orders: P-380, P-400, P-403 and M-77.*



## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1992 TO DATE*	1991 TO DATE*	1991 TOTAL
Provincial	639	458	458
Municipal	451	394	394
Total	1090	852	852

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1992 TO DATE*	1991 TO DATE*	1991 TOTAL
Provincial	711	437	437
Municipal	411	179	179
Total	1122	616	616

METHOD OF CLOSING ACTIVE APPEAL FILES 1992 TOTAL		
	BY ORDER	OTHER THAN BY ORDER
Provincial	164	547
Municipal	84	327
Total	248	874

Numbers are subject to change

\* January 1 - December 31

## HIGHLIGHTS OF COMPLIANCE INVESTIGATIONS

These highlights are prepared for the purpose of convenience only. Complete texts of compliance investigations are not currently available to the general public. Please note: investigation numbers are marked "P" to denote provincial investigations and "M" to denote municipal investigations. Keywords are general subject categories which represent the issues discussed in the investigations.

### INVESTIGATION I91-69P

Institution: Ministry of Community and Social Services

NOVEMBER 4, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • access • collect • consentacc  
• control • regulate

During an audit at a social services agency funded by the Ministry, a Ministry employee asked if she could randomly review several files of the developmentally disabled clients served by the agency. At first, the agency did not allow the Ministry to access the client files. The agency's concern was that the files contained highly sensitive information about the clients, such as family and medical history, and the Ministry had not obtained the clients' written consent for access. The agency, however, eventually granted the Ministry access to six client files, even though it did not get the clients' consent.

During the review, the Ministry employee made notes of program information only. She did not record clients' names, nor did she remove or photocopy any file documents.

The agency asked the IPC to review whether the Ministry was authorized under the *Act* to access the client files,

for program audit purposes, without the clients' knowledge or consent.

#### CONCLUSION

The IPC concluded that the client files contained the clients' personal information, as that term is defined in section 2(1) of the *Act*.

The IPC also concluded that the Ministry had not collected the clients' personal information, because the Ministry employee had only reviewed the client files, without keeping anything personally identifiable.

To determine if the Ministry was authorized to access the client files, the IPC considered section 4(2) of Ontario Regulation 516/90. This section states that only those individuals who need a record for the performance of their duties shall have access to it. The IPC concluded that section 4(2) is restricted to records in the custody or control of the institution. Thus, before the IPC considered whether the Ministry had obtained access to the client files, according to the *Act*, it first considered whether the Ministry had custody or control of the client files. The IPC concluded that the Ministry did not have custody or control of the client files. Thus, section 4(2) of Ontario Regulation 516/90 did not apply to the Ministry's practices, in this case.

#### SECTIONS CONSIDERED

1, 2(1), 38(2), 39(1), and 4 of Ontario Regulation 516/90

### INVESTIGATION I92-09P

Institution: Workers' Compensation Board

JANUARY 13, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

Personinfo • disclose

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

Boards of Education, I92-14M, I92-20M,  
I92-31M, I92-39M, I92-67M  
A City, I92-56M  
Lieutenant Governor's Board of Review,  
I92-45P  
Ministry of Community and Social Services,  
I91-69P  
Ministry of Correctional Services, I92-19P,  
I92-28P  
Ministry of Health, I92-29P  
A Municipal Board of Health, I92-19M  
A Municipal Corporation, I92-92M  
A Municipal Town, I92-07M  
A Municipality, I92-26M, I92-93M  
Ontario Lottery Corporation, I92-64P  
A Township, I92-28/29M  
A Transit Commission, I92-94M  
Worker's Compensation Board, I92-09P,  
I92-33P

The complainant had filed two claims for benefits with the Workers' Compensation Board. The Board subsequently disclosed his medical information to his former employer through two decision letters. The Board also sent copies of these two letters to the complainant. The complainant felt that the Board was not entitled to disclose his medical information in a decision letter/report since he had signed a written objection to the disclosure of his medical information to his employer. He complained that this was a breach of his privacy and contrary to the *Act*.

The Board stated that it had disclosed the complainant's personal information to the employer pursuant to section 42(e) of the *Act*, and that the applicable legislative authority was section 72(2) of the *Workers' Compensation Act* (the *WCA*).

#### CONCLUSIONS

The IPC found that the complainant's medical information contained in the two decision letters fell within the *Act's* definition of "personal information".



Section 42(e) of the *Act* states that an institution shall not disclose personal information except for the purpose of complying with an Act of the Legislature. The IPC reviewed section 72(2) of the *WCA* which states that every "decision of the Board and the reasons therefore shall be communicated promptly in writing to the parties of record". The IPC concluded that the Board's disclosure of the complainant's personal information to his employer pursuant to section 72(2) of the *WCA*, was in accordance with section 42(e) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(e)

#### STATUTES CONSIDERED

*Workers' Compensation Act*

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### INVESTIGATION I92-19P

Institution: Ministry of Correctional Services

NOVEMBER 25, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

An employee filed a grievance with the Ministry regarding a job assignment he did not get. The Ministry held a meeting with the employee, and two other employees who had filed similar grievances, to try to resolve the matter. At the meeting the Ministry disclosed personal information from the employee's performance appraisal, without his consent. The employee complained that this was a breach of his privacy, contrary to the *Act*.

#### CONCLUSION

The Ministry stated it was permitted to disclose the performance appraisal under section 42(b) of the *Act*. However, since the employee did not identify the performance appraisal in particular and con-

sent to its disclosure, the IPC determined that the disclosure was not in compliance with section 42(b) of the *Act*.

The Ministry also stated it was permitted to disclose the performance appraisal under section 42(c) of the *Act*, which allows a disclosure that is consistent with the purpose for which the information was compiled. The IPC found that the Ministry compiled the information in the performance appraisal for the purpose of human resource planning, and disclosed it for the purpose of resolving a grievance regarding a job assignment. The IPC found that the disclosure was for a consistent purpose. The employee also participated in the meeting by asking questions regarding his performance. Therefore, the IPC found that the employee might reasonably have expected the Ministry to disclose the personal information in this case. The IPC concluded that disclosing the performance appraisal was permitted under section 42(c) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I92-28P

Institution: Ministry of Correctional Services

DECEMBER 8, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • use • disclose • publicrec

On September 19, 1990, a Solicitor of the Ministry sent a letter with an attached "Statement of Claim" to a Senior Counsel with Correctional Services Canada. The Statement of Claim was filed in the Supreme Court of Ontario and named the complainant as one of the plaintiffs. According to the complainant, the Ministry's actions breached the use and disclosure provisions of the *Act*.

#### CONCLUSION

The IPC determined that the letter contained information from the Statement of Claim and that both records contained the complainant's personal information as defined in section 2(1) of the *Act*. However, Section 37 of the *Act* states:

This part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

The Statement of Claim was part of a court file. Normally, court files are records that are available to the general public. In the circumstances of this case, the IPC was advised that there was no court order sealing the court file or otherwise interfering with the publication of any of the information in the court file.

Therefore, section 37 of the *Act* applied to the circumstances of this case.

#### SECTIONS CONSIDERED

2(1), 37, 41, 42

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### INVESTIGATION I92-29P

Institution: Ministry of Health

DECEMBER 31, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • use • consistent • disclose

On December 6, 1988, a Management Intern of the Psychiatric Hospitals Branch sent an internal memorandum to the Branch Director about a patient. The memorandum stated, "In regards to hospital liaison with Corrections officials ...the information shared deals only with any changes to his location..." and "In regards to the Board of Review's liaison with Corrections Canada, ... a copy of the Warrant is forwarded to Corrections,..." The patient complained to the

IPC that the Ministry violated sections 41(a) and (b) and section 42 of the *Act*, and sections 4(1) and (2) of the O. Reg. 516/90, under the *Act*, when it disclosed information to Corrections Canada.

#### CONCLUSION

The IPC determined that the Management Intern was referring to the Lieutenant Governor's Board of Review (LGBR) in her memorandum. The Ministry and the LGBR are distinct institutions under the *Act*. Since the Ministry did not disclose the Lieutenant Governor's Warrant to Corrections Canada, the IPC did not address this issue.

With respect to the disclosure of the patient's location to Corrections Canada, the IPC determined that the location [address] of the patient was "personal information" as defined in section 2(1) of the *Act*.

The IPC also determined that the disclosure of changes of the complainant's location [address] was in compliance with section 42(c) of the *Act* which permits disclosure where the disclosure is for "the purpose for which it was obtained or compiled or for a consistent purpose".

The complainant was a dual status offender and according to the Ministry, Corrections Canada was jointly responsible for his safe custody. Therefore, Corrections Canada had to be kept informed of any changes with respect to the terms and conditions of the Lieutenant Governor's Warrant, which included the complainant's address or location.

Since the Ministry was required to disclose the complainant's location to Corrections Canada, it needed to use the complainant's personal information. Thus, it was our view that the institution was in compliance with section 41(b) of the *Act* (ie. the institution used the infor-

mation for a consistent purpose). Since the Ministry was in compliance with section 41(b), it was not necessary to address whether section 41(a) was violated.

With respect to the complaint of unauthorized access to records, the IPC determined that the Management Intern was advising the Branch Director about the status of the complainant's concerns and was drafting a response to those concerns. Therefore, the Management Intern needed to access the record for the performance of her duties. It was our view that the Ministry, therefore, did not contravene section 4(2) of O. Reg. 516/90. Since there was no unauthorized access to the personal information at issue, it was not necessary to address any remaining issues.

#### SECTIONS CONSIDERED

2(1), 41(a) and (b), 42, O. Reg. 4(1), (2)

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### INVESTIGATION I92-33P

Institution: Workers' Compensation Board

NOVEMBER 24, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

The complainant had filed a claim for benefits with the Board and was receiving them. The complainant asked the Board to send him a payment status letter which outlined the benefits he had received. The Board sent him this letter but also mailed a copy of this letter to his former employer. This letter stated that the complainant had received social assistance. As a result, the employer found out that the complainant had received social assistance. The complainant had not consented to this disclosure and wrote to the IPC that this was a breach of his privacy and contrary to the *Act*.

#### CONCLUSION

The IPC found that the information that the complainant had received social assistance came within the *Act*'s definition of "personal information". The IPC found that it was not necessary for the Board to disclose the fact that the complainant was in receipt of social assistance, to the employer. The employer only needed to know the amount of Board benefits which the complainant had received and for which the employer was responsible. Reimbursement of social assistance benefits was a matter between the complainant and the Board. The employer was not responsible for reimbursing these social assistance benefits. As a result, the IPC concluded that the Board did not disclose the personal information for the purpose for which it was obtained or compiled or for a consistent purpose as authorized under section 42(c) of the *Act*. As a result, the Board disclosed the complainant's receipt of social assistance contrary to the *Act*.

#### RECOMMENDATION

The Board should not disclose, to an employer, the fact that a worker is in receipt of social assistance.

#### SECTIONS CONSIDERED

2(1), 42(c)

#### STATUTES CONSIDERED

*Workers' Compensation Act*

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### INVESTIGATION I92-45P

Institution: Lieutenant Governor's Board of Review

DECEMBER 10, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo

Amendments to the Criminal Code of Canada changed the Lieutenant Governor's Board of Review (LGRB) from an



Advisory Review Board to an independent tribunal. This amendment also changed the name of the LGRB to the Ontario Criminal Code Review Board (CCRB). As a result, the CCRB inherited all records of the LGRB. A patient in a psychiatric facility complained that the LGRB transferred all records, including his "personal information" to the CCRB contrary to the provisions of the *Act*.

#### CONCLUSION

Section 619 of the Criminal Code was repealed and replaced by section 672. Section 672 provided for the establishment of the CCRB. Section 672.38(2) provided that a Review Board shall be treated "as having been established under the laws of the province." Therefore, for the purposes of the *Act*, the CCRB is a provincial body. In addition, the Ontario Regulation 516/90 made under the *Act* had been amended by section 1 of Ontario Regulation 497/92 to include the CCRB as a designated institution under the *Act*.

As a result of our discussions with the complainant, he withdrew his complaint.

#### SECTIONS CONSIDERED

2(1), 41(a),(b), and (c), 42, 43, and 61(1)(a)

#### STATUTES CONSIDERED

Sections 614 to 619, section 672 of the *Criminal Code of Canada*

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### INVESTIGATION I92-64P

Institution: Ontario Lottery Corporation

NOVEMBER 4, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • collect • disclose

An individual asked the IPC to review a rule of the Interprovincial Lottery Corporation (ILC) which gave it the right to

publish the names, addresses and/or photographs of lottery winners.

In addition, he complained about the Ontario Lottery Corporation (OLC) revising the format of the telecast of the Lotto 6/49 game.

#### CONCLUSION

The complainant was advised that as the ILC was not an institution under the *Acts*, it was not within the Commissioner's jurisdiction. However, the IPC examined a similar "rule" of the OLC, a member of the ILC but an institution under the provincial legislation.

The IPC determined that the OLC had statutory authority under the regulations of the *Ontario Lottery Corporation Act* to collect information from holders of winning tickets including their names and addresses and to publish these names and addresses together with photographs.

The IPC concluded that the collection of this information was in accordance with section 38(2) of the provincial *Act* which states that personal information may be collected if it is expressly authorized by statute. The IPC also concluded that the publication of this information fell within the circumstances outlined in sections 42(c) and 42(e) of the *Act*. The disclosure of names, addresses and/or photographs was for a purpose for which the information was obtained and it also complied with the regulations of the *Ontario Lottery Corporation Act*.

With respect to the complainant's concerns that the telecast of Lotto 6/49 had been changed, the IPC explained to him that this complaint did not fall within the jurisdiction of the Commissioner. It did not involve an access request for information in the custody or control of an institution nor did it involve personal information held by an institution.

#### SECTIONS CONSIDERED

2(1), 38(2), 42(c)

#### STATUTES CONSIDERED

*The Ontario Lottery Corporation Act*

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### INVESTIGATION I92-07M

Institution: A Municipal Town

DECEMBER 23, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose

A police association made an access request under the *Act* to the Town, for a report on the Town's police services. The Mayor, head of the Town, complied with the access request by providing a copy of the report to the police association. The report contained the personal information of an individual. This individual complained that his personal information had been disclosed to the police association and that he had not received any notice of the disclosure.

#### CONCLUSION

The IPC found that the Mayor had provided the police association with a copy of the report in question. The IPC concluded that this report contained the complainant's personal information.

The Town relied upon section 32(a) of the *Act* which states that personal information shall not be disclosed except in accordance with Part I of the *Act*, dealing with access to records. The IPC found that in order to comply with section 32(a) of the *Act*, the Mayor had to consider whether any of the mandatory exemptions in Part I applied to the report before releasing it. The Town stated that no personal information as defined by the *Act* had been released. However, the IPC determined that the report had contained the complainant's personal information. Since the Town did not recognize that the report contained any

personal information, the IPC concluded that the Mayor may not have considered the mandatory exemption in section 14 of the *Act*, which deals with the disclosure of personal information.

Since the Town did not comply with the provisions in Part I of the *Act*, the IPC concluded that the disclosure of the personal information was not in compliance with section 32(a) of the *Act*.

The Town also relied upon section 32(c) of the *Act* which states that personal information shall not be disclosed except for the purpose for which it was obtained or compiled or for a consistent purpose. The IPC found that the report was obtained for the purpose of improving police services. However, the IPC found that the report was disclosed to comply with an access request under Part I of the *Act*. The IPC concluded that this disclosure was not for the purpose of improving police services and, therefore, the disclosure was not for the purpose for which the personal information was obtained or compiled, or for a consistent purpose. The IPC concluded that the disclosure was not in compliance with section 32(c) of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Town ensure compliance with the provisions of Part I of the *Act*, and that the Town ensure that all staff are aware of the limited purposes for which the disclosure of personal information is permitted under the *Act*.

#### SECTIONS CONSIDERED

2(1), 9, 10, 14, 21, 32

### INVESTIGATION I92-14M

Institution: A Regional Board of Education  
NOVEMBER 27, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • disclose • bank • dispose  
• retention

The complainant was the mother of a minor child, who was a student of this Board of Education. At the request of the complainant, a hearing was held at the Ministry of Education, attended by representatives of the Board, including the Board's solicitor, the complainant and her child. The child's father (the complainant's ex-husband) was invited to the hearing but did not attend. The removal of a number of documents from the student's Ontario Student Record (OSR) was discussed at the hearing. Copies of these documents were given to the solicitor.

The complainant was concerned that an employee of the Board had disclosed the information discussed at the hearing to the father whom she believed was not entitled to it. The complainant was also of the view that: (1) the solicitor's copies of the OSR records should have been shredded; (2) a separate file maintained by the solicitor, containing personal information about her child, should have been listed as a data bank in the Board's directory of records; and (3) the student's OSR file should have indicated when the solicitor had accessed it.

#### CONCLUSION

We were unable to determine if the Board's employee had disclosed the information discussed at the hearing to the father. However, if the Board had disclosed personal information, it could have disclosed the information about the health, welfare and education of the child under sections 20(5) and (7) of the *Children's Law Reforms Act*. Therefore, the Board would have acted in accordance with section 32(e) of the *Act*.

The IPC also concluded that: (1) the information in the solicitor's file was retained in accordance with the retention provisions of section 5 of Ontario Regulation 517/90; (2) the solicitor's file was a personal information bank; and (3) the student's OSR file did not indicate use or disclosure by the solicitor, as required by section 35 of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Board include the solicitor's files in its next publication of its directory of records, as required by section 34. The IPC also recommended that any instances involving the use or disclosure of personal information from the OSR presently not included in the index of personal information bank, be recorded in the OSR as required by section 35.

#### SECTIONS CONSIDERED

2(1), 32(e), 34, 35(1), 54(c), Ontario Regulation 517/90.

#### STATUTES CONSIDERED

Section 266(5) of the *Education Act*, sections 20(5) and (7) of the *Children's Law Reforms Act*.

### INVESTIGATION I92-19M

Institution: A Municipal Board of Health

OCTOBER 15, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose

The Board was facing budget cuts and decided to offer its employees three choices involving their working hours. The Board asked the employees to indicate their choice on a survey form.

A memo with the form stated that "the survey is anonymous" and "any comments or questions you may wish to include would be most helpful". Most



employees commented on their choice and some signed their forms.

The employees' comments were summarized in a document. Several employees complained that they had given their comments in confidence. They believed that their privacy had been breached when a member of the Board read these comments verbatim at a public meeting attended by the media and when the Board provided other employees with copies of the summary.

#### CONCLUSION

The IPC determined that:

- The information on the survey form was "personal information" as defined in section 2(1) of the *Act*, since it was recorded information about identifiable individuals.

- The Board did not give the employees notice that their personal information was being collected on the survey form as required by section 29(2) of the *Act*.

- The summary contained personal information, since it contained recorded information about an identifiable individual.

- The Board did not disclose personal information as defined in section 2(1) of the *Act*, to the media, since the individuals who made the comments could not be identified from the specific comments that were disclosed.

- The Board disclosed personal information to other employees when it gave them a copy of the summary. This disclosure was not in accordance with section 32(d) since they did not need the personal information to do their jobs.

#### RECOMMENDATION

The IPC recommended that:

- When the Board collects personal information, it provides individuals with proper notice of collection as required by section 29(2) of the *Act*.

- The Board restrict disclosure of records of personal information it collects to the officers and employees of the institution who need to know the personal information to perform their job duties, in accordance with section 32(d) of the *Act*.

- The Board take steps to increase awareness of the kinds of information that are defined as personal information under the *Act*, and of its obligations regarding the collection, use, and disclosure of personal information.

- To prevent inadvertent disclosure of personal information, procedures for the handling of such personal information should be developed and communicated to staff.

#### SECTIONS CONSIDERED

2(1), 29, 31, 32

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### INVESTIGATION I92-20M

Institution: A Board of Education

JANUARY 26, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • disclose • security

An individual claimed that a letter, with a number of attachments containing her personal information, was: (1) collected by the Board without proper notice; (2) disclosed by the Board to other individuals without her consent; (3) misplaced by the Board.

#### CONCLUSION

Since the letter itself did not specifically identify any individual, it did not contain personal information. However, the attachments to the letter did contain personal information. The IPC found that when the personal information in the attachments was combined with the letter, the information in the letter then became the personal information of the complainant. Therefore, the IPC concluded that information in the letter when accompanied by the attachments, was personal information.

The complainant stated that the Chair of the Board had received both the letter and the attachments because he had forwarded the information to another individual who had in turn forwarded it to the complainant. However, the Chair maintained that he had received the letter, but not the attachments. Therefore, since the IPC was unable to determine whether the letter with the attachments was collected by the Chair, it was unable to state categorically that the personal information had been collected by the Board.

Since the IPC was unable to determine whether the personal information had been collected by the Board, we could not address the issue of disclosure.

The IPC reviewed the minutes of the public meeting where, according to the complainant, a replacement copy of the letter with the attachments had been provided to the Board. The IPC found that a replacement copy of the letter and attachments had not been provided to the Board and the IPC, therefore, concluded that there was no evidence that the personal information had been misplaced by the Board.

#### SECTIONS CONSIDERED

2(1), 27, 31, 32, Ont.Reg.517/90 s.3(3)

## INVESTIGATION I92-26M

Institution: A Municipality

JANUARY 5, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • use • disclose

An employee of the Municipality filed a human rights complaint against the Municipality. In order to prepare its defence, the Municipality's Legal Department requested the employee's personnel file from the Municipality's Community Services Department, where he was employed. This Department disclosed the employee's entire personnel file to the Legal Department, which reviewed it and used what personal information it deemed relevant, to prepare its defence. The employee was concerned that: (1) his entire personnel file was used by the Legal Department, and (2) that the Community Services Department had disclosed his entire personnel file to the Legal Department.

### CONCLUSION

1. Section 31(b) of the *Act* states that an institution shall not use personal information except for the purpose for which it was obtained or compiled, or for a consistent purpose. The IPC determined that the employee's personal information was obtained and compiled for employment purposes, and that the use of the personal information by the Legal Department was for the purpose of preparing a defence to the employee's human rights complaint, which was an employment-related matter. Accordingly, the IPC concluded that this use of the personal information was a consistent purpose.

Further, the IPC concluded that the employee might reasonably have expected the Legal Department's use of the personal information, since the human rights

complaint was an employment-related matter and the employee had understood the need for using some of this information. Therefore, the IPC concluded that the use of the personal information by the Legal Department was in compliance with section 31(b) of the *Act*.

2. Section 32(d) of the *Act* states that an institution shall not disclose personal information except if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions.

The IPC determined that the Legal Department "needed" the personal information in the performance of its duties to prepare a defence to the employee's human rights complaint. The IPC also determined that since the Legal Department was acting on behalf of the Municipality in preparing a defence to the employee's complaint, the disclosure was necessary and proper in the discharge of the Municipality's functions. The IPC concluded that the disclosure by the Community Services Department was in accordance with section 32(d) of the *Act*.

### SECTIONS CONSIDERED

2(1), 31, 32

## INVESTIGATION I92-28M/ I92-29M

Institution: A Township

DECEMBER 21, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

personinfo • disclose • accuracy

This complaint involved a mother and her daughter. The daughter, a contract employee of the Township, applied for a permanent position similar to her con-

tract position. The Township gave the job to a man. The daughter made an inquiry to the Ontario Human Rights Commission (the HRC), believing that she might have been discriminated against on the basis of sex. Meanwhile, the mother attended several open council meetings, asking questions about the Township's hiring practices.

The daughter eventually decided not to pursue the HRC matter, after learning that the position had first been offered to a woman. At an open council meeting, the Township's Administrator identified the daughter as the HRC complainant, saying that the HRC had found no grounds to proceed with her complaint.

After the local press received a copy of the minutes of the meeting, a reporter interviewed the Township's Deputy-Reeve about the HRC complaint. The Deputy-Reeve was under the impression that the mother had made the complaint to the HRC on behalf of her daughter. The article that was published said that the mother had made the complaint to the HRC, and that the HRC had found the allegations of sexual discrimination to be false. The article also said that the daughter had been on a shortlist of candidates to be hired for the position in question, and commented on her working abilities and qualifications.

The mother complained that her privacy was breached by the disclosure of information about her to the press, and that the information disclosed was inaccurate.

The daughter complained that her privacy was breached by the disclosure of information about her in the open meeting, in the minutes of the meeting, and in the interview with the press. She also complained that the information disclosed was inaccurate.



## CONCLUSION

I92-28M - the mother's complaint:

The IPC found that the information disclosed to the press was not the mother's "personal information" as defined in section 2(1) of the *Act*, because there was no recorded information to show that the HRC complainant was the mother. Therefore, the privacy provisions of the *Act* did not apply in the circumstances of the mother's complaint.

I92-29M - the daughter's complaint:

The IPC found that the information disclosed in the minutes and in the interview was the daughter's personal information as defined in section 2(1) of the *Act*, because it was recorded information about an identifiable individual.

The IPC also found that the disclosures had not been made in accordance with the provisions of section 32 of the *Act*, which outlines the circumstances which permit disclosure.

The IPC advised the complainant and the institution of the provisions of section 36(2) of the *Act*, which provide for the correction of personal information.

## RECOMMENDATION

The IPC recommended that:

1. The Township not identify individuals when discussing sensitive human resources matters at open council meetings.
2. The Township review the disclosure provisions of section 32 of the *Act*.

## SECTIONS CONSIDERED

2(1), 27, 30(2), 32, 36(2)

## INVESTIGATION I92-31M

Institution: A Municipal Board of Education

OCTOBER 22, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

## KEYWORDS

personinfo • notice • disclose

The Board had begun a security program. As a result, the Board issued photo identification badges for some employees to wear. The badges had the employee's photo, name, signature, and department name on them. Several employees complained that having to wear the badges with their names on them breached their privacy.

## CONCLUSION

The IPC concluded that the employees' names on the badges, together with their photos and department names, were the employees' personal information. Section 32(c) of the *Act* permits disclosure of personal information if the person would reasonably expect it. The IPC's view was that when the employees were hired, they would have expected that their names would be used in such a way. The IPC concluded that having the employees wear badges with their names did not breach the employees' privacy.

Section 29(2) of the *Act* says that when personal information is collected from individuals, notice must be given to them. The IPC found that the Board had not given the employees notice that their personal information was being collected when their photographs were taken for the badges.

## RECOMMENDATION

The IPC recommended that the Board give the employees notice for the collection of personal information when it takes photos for the badge identification program.

## SECTIONS CONSIDERED

2(1), 29(2), 32

## INVESTIGATION I92-39M\*

Institution: A School Board

NOVEMBER 26, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

## KEYWORDS

personinfo • collect • use

The complainant was an employee of the Board. A situation arose in which the Board felt, among other things, that disciplinary action against the complainant including dismissal for just cause might be warranted. In order to make such a determination, the Board collected information about the complainant including investigators' reports, video tape records and photographs. The complainant's employment was subsequently terminated.

The complainant was of the view that the Board had improperly collected his personal information.

During the course of the investigation, the complainant also indicated that he was concerned about the intended use of this information by the Board before grievance arbitration proceedings.

## CONCLUSION

The IPC determined that the collection of the complainant's personal information predated the municipal *Act* and therefore did not fall within the jurisdiction of the Commissioner.

The IPC determined that the intended use of the information was in accordance with sections 32 and 33 of the *Act*. The Board had collected the complainant's personal information in order to determine if there was just cause for dismissal.

His subsequent dismissal was the very subject of the matter of the arbitration proceedings. The complainant might have reasonably expected that his personal information would be used before the arbitration board. Therefore, the intended use was for a consistent purpose.

#### SECTIONS CONSIDERED

2(1), 32, 33

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### INVESTIGATION I92-56M

Institution: A City

DECEMBER 16, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • collect

The City was using a questionnaire to collect information about the lifestyle and fitness of its employees prior to completing a fitness assessment. The assessment was a prerequisite to becoming a member of the City's Fitness Centre. An employee, who received the questionnaire, complained to the IPC that the City was improperly collecting personal information under the provisions of the *Act*.

#### CONCLUSION

The IPC determined that the City was not complying with the provisions of the *Act* that govern the collection of personal information. The City agreed to stop collecting the information in question and to take the appropriate steps to destroy the information it had already collected.

#### SECTIONS CONSIDERED

2(1), 29

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### INVESTIGATION I92-67M

Institution: A Municipal Board of Education

OCTOBER 8, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • disclose • delegate

An individual filed a number of access requests under the *Act* with the Board. An employee of the Board was aware of these requests and the identity of the individual who filed them. A local newspaper printed an article about the access requests. The individual complained that the employee should not know that he had filed the access requests. He also complained that the employee disclosed this information to the newspaper, contrary to the *Act*.

#### CONCLUSION

The IPC determined that the FOI duties of the head of the Board were delegated to the employee, as permitted in section 49(1) of the *Act*. Therefore, the IPC concluded that the employee was permitted to know that the individual had filed the access requests. The IPC also reviewed the newspaper article and found that the individual was not identified. Therefore, the IPC concluded that the information in question did not meet the definition of "personal information" as that term is defined in section 2(1) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 32, 49(1)

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### INVESTIGATION I92-92M

Institution: A Municipal Corporation

DECEMBER 18, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

personinfo • Collection • Medicalinfo

The complainant was a recipient of social benefits under the *General Welfare Assistance Act*. His case worker was requesting information about his job search and details about his illness from his physician. The complainant felt that this was an improper collection under the *Act*.

#### CONCLUSION

The Corporation was permitted to collect the requested personal information under O. Reg. 441 under the *General Welfare Assistance Act*. However, the IPC was of the view that, while the collection of job search information was appropriate under section 28(2) of the *Act*, the Corporation did not need all the medical information that was requested. The Corporation agreed with the IPC's view and stopped its collection of the medical information. The complainant was satisfied with this resolution of his complaint.

#### SECTIONS CONSIDERED

2(1), 28(2)

#### STATUTES CONSIDERED

*General Welfare Assistance Act*

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### INVESTIGATION I92-93M

Institution: A municipality

FEBRUARY 1, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • SIN • notice

The complainant (a senior citizen) had completed a municipal application form for free snow removal from city sidewalks. This form asked applicants to provide certain personal information, including their old age security pension number. This consists of a three-number prefix plus the social insurance number (the SIN). The complainant stated that her husband had provided his birth certificate as proof of being a senior citizen,



and that the municipality had accepted this. As a result, the complainant was questioning why the municipality was collecting the SIN, when it was not necessary.

#### CONCLUSION

The IPC concluded that it was not necessary for the municipality to collect the SIN from senior citizens for the purpose of requesting free snow removal.

#### RECOMMENDATION

The IPC recommended that the municipality no longer collect the SIN and that it provide notice on the form, pursuant to section 28(2) of the *Act*.

The municipality agreed that it did not need to collect the SIN from senior citizens and would revise its application form accordingly. The municipality also agreed that it would provide notice on its application form.

#### SECTIONS CONSIDERED

2(1), 28(2), 29(2)

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## INVESTIGATION I92-94M

Institution: A transit commission

FEBRUARY 1, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

retention of personal information

The complainant had sent his unsolicited resume to the transit commission (the Commission). The Commission acknowledged his resume and told him that they would keep it on file for four months. The complainant subsequently filed an access request with the Commission for his personal information. The Commission informed him that they had no such records. The complainant asserted that they should have kept his resume for the four months already men-

tioned, plus one year. He complained that the Commission had not complied with the retention provisions of the *Act*.

#### CONCLUSION

The Commission advised the IPC that it had in fact acknowledged the complainant's resume and had destroyed it after four months. However, the IPC found that the Commission should have kept the resume for one year after receipt. As a result, the IPC concluded that the Commission had not complied with the retention provisions of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Commission comply with the retention provisions for personal information contained in the *Act*.

The Commission agreed to comply with this recommendation.

#### SECTIONS CONSIDERED

2(1), Ontario Regulation 823

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1992 TO DATE*	1991 TO DATE*	1991 TOTAL
Provincial	73	94	94
Municipal	94	70	70
Total	167	164	164

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1992 TO DATE*	1991 TO DATE*	1991 TOTAL
Provincial	104	68	68
Municipal	98	32	32
Total	202	100	100

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1992 TOTAL		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	11	14
Retention	4	9
Use	2	4
Disclosure	85	70
Access	2	1

Numbers are subject to change

\* January 1 - December 31

### IPC PRÉCIS

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# PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

SUMMER  
1993



## ORDERS

All IPC orders are outlined briefly below. Selected orders include textual summaries. This information is provided for convenience only. For accurate reference, refer to the full-text orders available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8.

### ORDER P-411

#### APPEAL P-9200439

Institution: Ministry of Consumer & Commercial Relations

FEBRUARY 15, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

law enforcement • investigation • report  
• advice to government • public interest  
override

### ORDER P-412

#### APPEAL P-9200738

Institution: Ministry of the Solicitor General

FEBRUARY 17, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • medical condition  
• relevant to • fair determination of rights  
• presumption of • unjustified invasion of  
• personal privacy

The Ministry received a request for access to the record relating to the investigation of a boating accident in which two persons were killed. In particular, the requester was seeking any information relating to the blood alcohol and

## AT A GLANCE

### ORDERS issued between February 15, 1993 and April 23, 1993.

Belleville Board of Commissioners of Police, M-97	Ministry of Correctional Services, P-421
Boards of Education	Ministry of Education, P-443
Halton, M-113, M-114, M-115	Ministry of Education and Training, P-425, P-437, P-443, P-445
Lincoln County, M-91	Ministry of the Environment, P-429
Norfolk, M-103, M-106, M-107, M-108	Ministry of Finance, P-442
Northern District School Area, M-122	Ministry of Financial Institutions, P-415
Wellington, M-96	Ministry of Health, P-423, P-424, P-414, P-439, P-444
Windsor, M-104	Ministry of Natural Resources, P-427, P-441, P-447
Carleton Roman Catholic Separate School Board, M-100, M-101	Ministry of Northern Development and Mines, P-433, P-435
The City of Toronto, M-94, M-118	Ministry of the Solicitor General, P-412
Cochrane, Iroquois Falls, Black River-Matheson District Roman Catholic Separate School Board, M-99	Ministry of the Solicitor General and Correctional Services, P-428, P-432, P-436, P-446
The Corporation of the City of Barrie, M-117	Ministry of Transportation, P-448
The Corporation of the Town of Markham, M-90	Municipality of Metropolitan Toronto, M-86
The Corporation of the City of Cambridge, M-87	Niagara College of Applied Arts and Technology, P-431
The Corporation of the Town of Caledon, M-123	Ontario Human Rights Commission, P-413, P-417
Durham Region Board of Commissioners of Police, M-119, M-125	Ottawa Board of Commissioners of Police, M-88
Halton Regional Board of Commissioners of Police, M-98	Ottawa-Carleton Regional Transit Commission, M-89, M-124
Hamilton-Wentworth Regional Board of Commissioners of Police, M-93	Palmerston Police Service, M-110
Management Board of Cabinet, P-418, P-419, P-420	Regional Municipality of Ottawa-Carleton, M-105, M-112
Metropolitan Toronto Police Services Board, M-116	Regional Municipality of York Police Services Board, M-102, M-111
Metropolitan Toronto Board of Commissioners of Police, M-95	Regional Municipality of Waterloo, M-109
Metropolitan Toronto Licensing Commission, M-120, M-121	Seneca College of Applied Arts and Technology, P-422
Ministry of the Attorney General, P-416, P-434	Sheridan College of Applied Arts and Technology, P-440
Ministry of Community and Social Services, P-426	Stadium Corporation of Ontario Ltd, P-430, P-438
Ministry of Consumer and Commercial Relations, P-411	Town of Ajax, M-92

tetrahydrocannabinol (THC) levels of the two deceased persons. This information had been severed from a one page document entitled "Report of the Centre of Forensic Sciences". The Ministry claimed section 21 as the basis for exempting this information.

#### ORDER

The Ministry's decision not to disclose the information was upheld.

#### Section 2 - Personal Information

Because the information consists of recorded information about identifiable individuals, it qualifies as "personal information" as defined in Section 2(1) of the *Act*. Section 2(2), which states that personal information does not include information about an individual who has been dead for more than 30 years, did not apply as the deaths occurred within the past 30 years.

#### Section 21

Once it has been determined that a record contains personal information, section 21 of the *Act* prohibits disclosure of this information except in certain circumstances. One such circumstance is contained in section 21(1)(f) of the *Act* which states that a head shall refuse to disclose personal information to any person other than the individual to whom the information relates except if a disclosure does not constitute an unjustified invasion of personal privacy. Because the post mortem forensic test results of blood alcohol and THC concentration related to the medical condition of the two deceased persons at the time of their death, the Inquiry Officer found that disclosure of the information would result in a presumed unjustified invasion of personal privacy (section 21(3)(a)).

Section 21(2) provides some criteria for the Ministry to consider in determining whether disclosure of personal

information constitutes an unjustified invasion of personal privacy. A combination of the factors listed in section 21(2) and/or any additional unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 21(3), however, such a case would be extremely unusual.

Although the requester/appellant in this appeal is involved in a civil proceeding and the personal information he is seeking may have some bearing on the determination of those proceedings, the Inquiry Officer was not satisfied that the personal information was relevant to a fair determination of rights affecting the person who made the request (section 21(2)(d)).

\*For further reference, see full text of this Order, or Order P-312.

#### SECTIONS CONSIDERED

21(3)(a), 21(2)(d)

#### PREVIOUS ORDERS CONSIDERED

P-312

### ORDER P-413

#### APPEAL P-910100

Institution: Ontario Human Rights Commission

FEBRUARY 17, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

discretion • reconsideration

### ORDER P-414

#### APPEAL P-91063

Institution: Ministry of Health

FEBRUARY 18, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

serverance • personal privacy • name

### ORDER P-415

#### APPEAL P-9200579

Institution: Ministry of Financial Institutions

FEBRUARY 18, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

### ORDER P-416

#### APPEAL P-9200379

Institution: Ministry of the Attorney General

FEBRUARY 23, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

*Police Services Act* • personal information • law enforcement • investigation • law enforcement record • advice to government • factual material

### ORDER P-417

#### APPEAL P-910325

Institution: Ontario Human Rights Commission

FEBRUARY 24, 1993

(INQUIRY OFFICE BIG CANOE)

#### KEYWORDS

solicitor client privilege • advice to government • law enforcement • report • personal information • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy

### ORDER P-418

#### APPEAL P-9200667

Institution: Management Board of Cabinet

FEBRUARY 24, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • trade secret • commercial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • similar information • no longer supplied • undue loss or gain • personal information



## ORDER P-419

### APPEAL P-9200707

Institution: Management Board of Cabinet

FEBRUARY 24, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • commercial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • undue loss or gain  
• personal information

## ORDER P-420

### APPEAL P-9200713

Institution: Management Board of Cabinet

FEBRUARY 24, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • trade secret  
• commercial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position • personal  
information

## ORDER P-421

### APPEAL P-920088

Institution: Ministry of Correctional  
Services

FEBRUARY 25, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • criminal history  
• correctional record • *Ministry of  
Correctional Services Act* • law enforcement  
• confiscated record • peace officer

The Ministry received a request for access to the requester's personal and medical files from four correctional centres. The record responsive to the request consisted of 683 pages, and the requester was granted access to a large number of pages. The Ministry had denied access to the remaining pages pursuant to sections 14(1)(a), (b), (c), (d), (e) and (h) and sections 49(b) and (e) of the *Act*. Generally, the record relates to requester's

application for a temporary leave of absence from the correctional centre in which he was an inmate.

The requester appealed the Ministry's decision to deny access to only certain pages of the record.

#### ORDER

The Inquiry Officer upheld the Ministry's decision not to disclose the record. In disposing of the appeal, the Inquiry Officer dealt only with sections 49(e) and 14(1)(h) of the *Act*.

#### Section 2(1) - Personal Information

All of the information in the record met the definition of personal information found in section 2(1) of the *Act* and related solely to the requester/appellant.

#### Section 49(e)

Section 49(e) of the *Act* allows the Ministry to deny a requester access to his/her personal information in situations where the information is a correctional record and release of the information could reasonably be expected to reveal information that was supplied in confidence.

A review of the record indicates that the information withheld from the appellant consists of information received from a third party by employees of the Correctional Centre processing the requester/appellant's application for a temporary leave of absence. After reviewing the representations of the Ministry, the Inquiry Officer was satisfied that the record was a correctional record and that the disclosure of the personal information would reveal information supplied to the Ministry in confidence. Therefore certain parts of the record qualify for exemption under section 49(e).

#### Section 14(1)(h)

The Ministry also claimed that disclosure of one page of the record could reasonably be expected to reveal a record which had been confiscated from a person by a peace officer in accordance with an act or regulation (section 14(1)(h)). In the Inquiry Officer's view, section 14(1)(h) allows the Ministry to deny a requester access to a record where either the record itself is a record which has been confiscated or where the disclosure of the record could reasonably be expected to reveal the content of another record which has been confiscated from a person by a peace officer, in accordance with an *Act* or Regulation.

In its representations, the Ministry argued that the superintendent of the correctional centre is a peace officer under section 11(1)(a) of the *Ministry of Correctional Services Act*. The Ministry further argued that the record was confiscated under the authority of sections 22(1) and 25(1) of Regulation 649, under the *Ministry of Correctional Services Act*. After considering the Ministry's representations, the provisions of the *Ministry of Correctional Services Act* and Regulation 649 under that *Act*, the Inquiry Officer was satisfied that the Ministry had provided sufficient evidence to establish that the one page met all the requirements to qualify for exemption under section 14(1)(h) of the *Act*. Both section 49(e) and section 14(1)(h) are discretionary exemptions. After reviewing the Ministry's representations regarding its exercise of discretion, the Inquiry Officer found nothing to indicate that it was improper.

#### SECTIONS CONSIDERED

49(e), 14(1)(h)

#### PREVIOUS ORDERS CONSIDERED

64

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## ORDER P-422 APPEAL P-9200785

Institution: Seneca College of Applied Arts  
and Technology

FEBRUARY 26, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

school records • economic or other  
interests • examination questions

The College received a request for access to copies of the booklet of final examination questions used in a course taken by the requester at the College. The College denied access to the booklet pursuant to Section 18(1)(h) of the *Act*. Section 18(1)(h) states that a head may refuse to disclose a record that contains questions that are to be used in an examination or test for an educational purpose.

The College provided the requester with the correct answers to the questions, the marking scheme for the examination and a written rationale from the course instructor. The College also confirmed that it was prepared to allow the requester to view the questions and to make notes.

### ORDER

The College was ordered to release the booklet.

In its representations, the College argued that Section 18(1)(h) should apply both to questions which have not yet been used in an examination and questions which are maintained in a "test bank". The Assistant Commissioner found that the record at issue consists of questions already used in examinations. The fact that the College may at some point in the future choose to re-use the same questions is not sufficient to satisfy the requirements of section 18(1)(h). Because the College is prepared to allow students to view the examination questions and make notes, the refusal to disclose a copy

of the examination questions is inconsistent with a legitimate concern for the integrity of the "test bank" of questions.

### SECTIONS CONSIDERED

18(1)(h)

### PREVIOUS ORDERS CONSIDERED

P-351

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## ORDER P-423 APPEAL P-9200334

Institution: Ministry of Health

FEBRUARY 26, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

law enforcement • personal privacy  
• refusal to confirm or deny existence of  
record

The Ministry received a request for access to any information pertaining to the requester in the possession of the Ministry's Emergency Health Branch. The requester is a former employee of the Ministry who was discharged in July, 1991. The Ministry responded by refusing to confirm or deny the existence of a responsive record pursuant to section 14(3) and section 21(5) of the *Act*. Section 14(3) states that a head may refuse to confirm or deny the existence of a record to which subsection 14(1) or 14(2) apply. Section 21(5) states that a head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

### ORDER

The Assistant Commissioner disclosed the existence of the records responsive to the request. The order was released to the Ministry before it was released to the requester/appellant in order to provide the Ministry with an opportunity to review the order and determine whether to apply for judicial review. The Assistant Commissioner also ordered the Min-

istry to make a substantive decision under the access provisions of the *Act*.

By invoking sections 14(3) and/or 21(5), the Ministry is denying the requester/appellant the right to know whether a record exists, even when one does not. These sections provide the Ministry with a significant discretionary power which should be exercised only in rare cases.

### Section 14(3)

In order to successfully argue the application of section 14(3) to a record, the Ministry must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 14(1) or (2). An institution must provide detailed and convincing evidence that disclosure of the mere existence of the requested records would convey information to the requester which could compromise the effectiveness of a law enforcement activity.

The Ministry argued that disclosure of the fact that an investigation of one nature is underway does not mitigate or lessen the requirement of the Head to refuse to confirm or deny an investigation of another nature is underway when circumstances necessitate such an action. In the Assistant Commissioner's view, by making such an argument, the Ministry confused the exercise of discretion under section 14(3) with the analysis of the exemption claimed under sections 14(1) and (2). Section 14(3) does not require the Ministry to confirm the "nature" of the investigation. It merely gives the Ministry the discretion to refuse to confirm or deny the existence of a record to which section 14(1) or (2) applies. The Ministry failed to establish that disclosure of the mere existence of the requested records would convey information to the requester which would compromise the effectiveness of any law enforcement activity.



## Section 21(5)

Similarly, an institution relying on section 21(5) must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. The Ministry must provide detailed and convincing evidence that disclosure of the mere existence of the requested records would convey information to the requester and that the disclosure of this information would constitute an unjustified invasion of personal privacy. By simply confirming that records associated with an investigation exists, without indicating the nature of these records, the type of investigation or the parties involved, the Ministry would not be compromising the privacy interest of any individual.

The Assistant Commissioner also commented on the fact that the Ministry, itself, has confirmed that a Ministry employee met with the requester/appellant being investigated and disclosed that there was an investigation underway. It is reasonable to assume that if an investigation is being conducted, some records would have been produced. Therefore, it is not open to the Ministry to raise sections 14(3) or 21(5) in these circumstances. Because the interest of certain other individuals may be affected by disclosure of the records, the Assistant Commissioner decided to send the matter back to the Ministry to issue a substantive decision under the access provisions of the *Act*.

### SECTIONS CONSIDERED

14(3), 21(5)

### PREVIOUS ORDERS CONSIDERED

P-338, P-339, P-344, M-58

## ORDER P-424 APPEAL P-9200697

Institution: Ministry of Health

FEBRUARY 26, 1993

(COMMISSIONER WRIGHT)

### KEYWORDS

cabinet records • solicitor client privilege

The Ministry received a request for access to all records pertaining to the Ministry fact sheet "Residency Requirements for Regular and Extended Absences". The Ministry identified 11 responsive records and released all but two of them to the requester. The records at issue are a draft report entitled "Health Care Benefits: Residents, Travellers and Temporary Residents" and a 5-page memorandum concerning whether the Ministry will pay the out-of-country expenses of a specific individual. The Ministry claimed that disclosure of the draft report would reveal the substance of deliberations of the executive council or its committees or a record containing policy options or recommendations submitted or prepared for submission to executive council or its committees (section 12(1) and section 12(1)(b)). The Ministry claimed that solicitor-client privilege (section 19) applies to the 5 page memorandum.

### ORDER

The Ministry's decision to withhold disclosure of the records was partially upheld.

### Section 12(1)(b)

In order to qualify for exemption under section 12(1)(b), the record must contain policy options or recommendations and must have been submitted or prepared for submission to the executive council or its committees. Although the draft report meets the first criterion as it contains policy options and recommendations, the Ministry itself states that the first record did not go before cabinet in

its current form nor is it intended to go before cabinet at a future date. Therefore, section 12(1)(b) does not apply.

### Section 12(1)

Any record where disclosure would reveal the substance of deliberations of an executive council or its committees qualifies for exemption under section 12(1). The draft report contains three parts. Because the contents of part III would reveal substance of a cabinet submission made in April, 1991, part III of record 1 qualifies for exemption under section 12(1).

Parts I and II of the draft report were incorporated into a "voluminous" discussion paper. The contents of the discussion paper are currently being reworked into a policy options paper which is tentatively scheduled for the Deputy Minister's committee. In the Commissioner's view, the relationship between the contents of parts I and II of the record and a possible future cabinet submission are remote. Therefore, parts I and II of the record do not qualify for exemption under section 12(1). This also applies to those portions of parts I and II which appear in the executive summary of the report.

### Section 19

Section 19 applies to record 2 because it meets all four parts of the test for common-law solicitor-client privilege. It is a written communication. Its contents raised an expectation that it will be treated in confidence; it is a communication from a lawyer to an agent of the director of the Ministry's Communications and Information Branch and it is directly related to giving legal advice.

### SECTIONS CONSIDERED

12(1), 12(1)(b), 19

### PREVIOUS ORDERS CONSIDERED

22, 73, 72, 49

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**ORDER P-425**  
**APPEAL P-911146**

Institution: Ministry of Education

MARCH 2, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

fees • estimate • fee waiver

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**ORDER P-426**  
**APPEAL P-9200630, P-9200632**  
**AND P-9200636**

Institution: Ministry of Community and  
Social Services

MARCH 2, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

economic or other interests • final plan or  
proposal

The Ministry received three separate requests for access to the files of three job competitions conducted by the Ministry. The requester was a candidate in all three competitions. The Ministry provided copies of the questions and the requester's answers and ratings. The Ministry denied access to the "correct answers" because: 1) this would disclose a record that contains plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public (section 18(1)(f)) or 2) this would disclose a record that contains proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or result in undue financial benefit or loss to a person (section 18(1)(g)).

**ORDER**

The Ministry was ordered to disclose the records containing the correct answers.

**Section 18(1)(f)**

Section 18(1)(f) is designed to protect records of a certain nature, namely "plans", that have not yet been put into operation or that have not yet been made public irrespective of the consequences of their disclosure. The Inquiry Officer found that even if he were prepared to accept that the records contain "plans" he was not satisfied that the "plans" have not yet been put into operation or made public. Therefore the correct answers do not qualify for exemption under section 18(1)(f).\*

**Section 18(1)(g)**

The Inquiry Officer also found that even if he were prepared to accept that the correct answers are part of the Ministry's hiring "plan" or "policy" and that their disclosure could result in premature disclosure of a pending policy decision or undue financial and further loss to a person, he could not find that the exemption under section 18(1)(g) is satisfied since the correct answers are not part of a proposed plan or policy.\*

\*See full-text order for complete description of the test.

**SECTIONS CONSIDERED**

18(1)(f), 18(1)(g)

**PREVIOUS ORDERS CONSIDERED**

229

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**ORDER P-427**  
**APPEAL P-910952**

Institution: Ministry of Natural Resources

MARCH 2, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • personal opinions  
• names

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**ORDER P-428**  
**APPEAL P-910958**

Institution: Ministry of the Solicitor General  
and Correctional Services

MARCH 3, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • compiled as part of  
investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • personal privacy  
• another individual's personal privacy  
• law enforcement • security concerns  
• solicitor client privilege

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**ORDER P-429**  
**APPEAL P-9200662**

Institution: Ministry of the Environment

MARCH 3, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-430**  
**APPEALS P-9200303 AND**  
**P-9200304**

Institution: Stadium Corporation of Ontario  
Limited

MARCH 9, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

fees • estimate

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**ORDER P-431**  
**APPEAL P-9200489**

Institution: Niagara College of Applied Arts  
and Technology

MARCH 9, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

third party information • commercial  
• tender or bid • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position



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**ORDER P-432**  
**APPEAL P-9200621**

Institution: Ministry of the Solicitor General  
and Correctional Services

MARCH 16, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • unjustified invasion  
of • personal privacy

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**ORDER P-433**  
**APPEAL P-9200381**

Institution: Ministry of Northern  
Development and Mines

MARCH 16, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

audit investigation • personal information  
• employment history • public scrutiny  
• highly sensitive • supplied in confidence  
• presumption of • unjustified invasion of  
• personal privacy

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**ORDER P-434**  
**APPEAL P-9200153**

Institution: Ministry of the Attorney General

MARCH 22, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

advice to government • personal  
information • relevant to • fair  
determination of rights • highly sensitive  
• supplied in confidence • presumption of  
• unjustified invasion of • another  
individual's personal privacy

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**ORDER P-435**  
**APPEAL P-9200588**

Institution: Ministry of Northern  
Development and Mines

MARCH 22, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

Commissioner • consideration of section  
not raised by institution  
• intergovernmental relations • third party  
information • scientific • technical  
• financial • "supplied" • "in confidence"  
• reasonable expectation of • harm  
• similar information • no longer supplied

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**ORDER P-436**  
**APPEAL P-9200786**

Institution: Ministry of the Solicitor General  
and Correctional Services

MARCH 26, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • unjustified invasion  
of • personal privacy

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**ORDER P-437**  
**APPEAL P-9200818**

Institution: Ministry of Education and  
Training

MARCH 30, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-438**  
**APPEALS P-9200299 AND**  
**P-9200300**

Institution: Stadium Corporation of Ontario  
Limited

MARCH 30, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

fees • estimate

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**ORDER P-439**  
**APPEAL P-9300001**

Institution: Ministry of Health

APRIL 1, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

**KEYWORDS**

personal information • names • consent to  
access to • personal information  
• unjustified invasion of • personal privacy

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**ORDER P-440**  
**APPEAL P-9200348**

Institution: Sheridan College of Applied  
Arts and Technology

MARCH 31, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • recommendations  
or evaluations • presumption of  
• unjustified invasion of • another  
individual's personal privacy • advice to  
government

The College received a request for access to the specifics of all allegations of improper conduct made against the requester, to the College by a named individual. The College determined that two records were responsive to the request, an internal college memorandum and a letter written by the named individual. The College transferred the part of the request concerning the letter to the Palmerston Police Service on the basis that it had a greater interest in the record. The College denied access to the memorandum pursuant to sections 49(a) and (b) of the *Act*. Section 49(a) states that the College may refuse to disclose personal information to the individual to whom the information relates where a number of sections, including section 13, would apply to the disclosure of that personal information. Section 49(b) states that the College may refuse to disclose personal information to the individual to whom the information relates where disclosure would constitute an unjustified invasion of another individual's personal privacy. Sections 21(3) and 21(2) provide some guidance in determining whether disclosure would result in an unjustified invasion of personal privacy.

#### ORDER

Decision of the College not to disclose the record was partially upheld.

#### Section 49(b)

The record contains personal information that relates to both the requester and the individual who made the complaint to the College. The College has claimed that disclosure of the personal information of the complainant is presumed to constitute an unjustified invasion of personal privacy because it consists of personal recommendations or evaluations, character references or personnel evaluations (section 21(3)(g)). The Inquiry Officer found that any comments in the record which might be seen as "evaluations" would pertain only to the requester and not the complainant. Therefore, section 21(3)(g) is not relevant. The Inquiry Officer also reviewed the other presumptions listed in section 21(3) and in his view, none applied in the circumstances of the appeal. He also reviewed factors listed under section 21(2) and found that none of the factors which weigh in favour of privacy protection (sections 21(2)(e)-(i)) are relevant. The Inquiry Officer was not satisfied that disclosure of the record would be an unjustified invasion of the personal privacy of the complainant.

The Inquiry Officer commented that where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information would not constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 49(b) in which he/she can be denied access to the information is if it can be demonstrated that the disclosure of the information would constitute an unjustified invasion of another individual's privacy.

#### Section 49(a)

Section 49(a) is a discretionary exemption which allows the College to deny the requester access to information that relates to him/her if the information qualifies for exemption under certain sections, one of which is section 13.

It has been established in several previous orders that advice for the purposes of section 13(1) must contain more than mere information. Generally speaking, "advice" pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient in the deliberative process. "Recommendations" are to be viewed in the same vein. In the opinion of the Inquiry Officer, only one sentence of the record qualifies for exemption under section 13(1). This sentence describes a course of action suggested by the author of the record, to her immediate supervisor, who was in a position to either accept or reject the recommendations. The part of the record containing the recommendations can reasonably be severed without disclosing information that falls under the section 13(1) exemption.

Section 13(2) provides a number of mandatory exceptions to the section 13(1) exemption, one of which states that a head shall not refuse to disclose a record that contains reasons for a final decision. The appellant submits that the record must contain the reasons for the decision to dismiss him. The Inquiry Officer reviewed the sentence and the representations of the parties and found that the record does not contain the reasons for a final decision with respect to the allegations made against the requester. Therefore, section 13(2)(l) is not applicable in the circumstances of the appeal and, therefore, one sentence of the record is exempt from disclosure pursuant to section 49(a).

#### SECTIONS CONSIDERED

49(b), 49(a), 13(1)

#### PREVIOUS ORDERS CONSIDERED

20, 37, 118, 161, P-248, P-304, P-348, P-356

### ORDER P-441 APPEAL P-9200589

Institution: Ministry of Natural Resources

APRIL 1, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

third party information • confidentiality provision in other *Act* • economic or other interests • reasonable expectation of harm • solicitor client privilege • crown counsel • advice to government • personal information • opinions or views • unjustified invasion of • personal privacy

The Ministry received a request for a copy of the recommendations of an individual who was acting as the Deputy Minister's designee at stage two of a grievance. The Ministry identified the responsive record as a one page covering memorandum, a 12-page report and a one page appendix. The Ministry provided access to parts of the record and denied access to other portions pursuant to sections 13(1), 17(1)(d), 19, 18(1)(c) and 21(1) of the *Act*.

#### ORDER

The decision of the Ministry was partially upheld. In dealing with the issues raised by the appeal the Assistant Commissioner dealt solely with the application of sections 18(1)(c), 19, 13 and 21.

As a preliminary matter, the Assistant Commissioner dealt with two issues; the appropriateness of the institution's claim for exemption under section 17(1)(d) and its further claim that the record is a privileged document.



## Section 17(1)(d)

In its original decision letter, the institution raised section 17(1)(d) of the *Act* as one of the bases for exempting the remaining parts of the record. As the written representation submitted by the Ministry made no reference to this exemption, the Assistant Commissioner concluded that the claim had been abandoned by the Ministry. However, he went on to comment that, in any event, in order to qualify for exemption under section 17(1) of the *Act*, the information contained in a record must have been supplied to an institution, by a third party. A third party, by definition, is not part of the institution. The record at issue in the appeal was created by an employee of the Ministry and, in the Assistant Commissioner's view, could not qualify for consideration as third party information under section 17(1).

## Privilege

The second preliminary issue relates to the Ministry's claim that the record is a privileged document at both common law and under existing labour relations jurisprudence. Section 67(2) of the *Act* lists the confidentiality provisions which prevail over the *Act*. Included in this list are certain provisions of the *Labour Relations Act*, the *Colleges Collective Bargaining Act*, and the *Crown Employees Collective Bargaining Act* which deal with the disclosure of information relating to membership in a trade union or other employee organization. None of the confidentiality provisions listed in section 67(2) deal with the type of record which is at issue in this appeal. The Ministry did not identify a confidentiality provision in any other statute that specifically overrides the provisions of the *Act* and covers the type of record which is at issue in this appeal. Therefore, the Assistant Commissioner found that the records must be considered under the appropriate provisions of the *Act*.

The Assistant Commissioner went on to say that whether a record such as the one at issue in this appeal might be recognized as "privileged" in labour relations jurisprudence is not relevant to a request for access under the *Act* where that "privilege" is not codified in one of the exceptions to the right of access under sections 12 through 22 of the *Act*. Solicitor client privilege is codified in section 19 of the *Act* and was dealt with by the Assistant Commissioner in making his determination.

## Section 18(1)(c)

To establish a valid exemption claim under section 18(1)(c), the Ministry must demonstrate a reasonable expectation of prejudice to the economic interest or competitive position of a government institution arising from disclosure of the information. It is not necessary to prove that the actual harm enumerated in this section will result from disclosure, only that the expectation of harm is based on reason and is not fanciful, imaginary or contrived. The onus rests with the institution to demonstrate that the harms envisioned by this section are present or reasonably foreseeable. The evidence submitted by the Ministry must be detailed and convincing.

Section 18(1)(c) does not contemplate prejudice to any so-called "economic interest" of a ministry in its relations with its employees; rather, it provides institutions with a discretionary exemption which can be claimed for certain records if, disclosure could reasonably be expected to prejudice an institution in the competitive market place, interfere with its ability to discharge its responsibility in managing the provincial economy or adversely affect the government's ability to protect its legitimate economic interest. Because the representations of the Ministry focused on its relations with its employees, the Ministry has failed to

establish that the record qualifies for exemption under section 18(1)(c).

## Section 19

The Ministry submitted that the record qualifies for exemption under branch 2 of the section 19 exemption. Two criteria must be satisfied in order for a record to qualify for exemption under branch 2: First, the record must have been prepared by or for Crown counsel; and second, the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

It is clear that the record at issue was not prepared by Crown counsel. It was created by the manager of the Ministry's Water Policy section who is not a lawyer. It is also evident from the face of the record that it was not prepared for Crown counsel. It was created for presentation to senior management within a particular division of the Ministry. Although in some instances, stage two grievance reports are eventually considered by Crown counsel in conducting litigation, in the circumstances of this appeal, the Assistant Commissioner could not accept that either the author or recipient of the record is crown counsel as required by the test. Therefore, the record fails to qualify for exemption under section 19.

## Section 13

Section 13(1) of the *Act* states that a head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant. It has been established in a number of previous orders that "advice for the purposes of section 13(1) must contain more than mere information. Generally speaking, "advice" pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient in the deliberative process. Recommendations should be viewed in

the same vein. In this appeal, the record was prepared for the executive director of the Ministry's Lands and Water section. Portions of the record clearly describe a recommended method of resolving the grievance and addressing the concerns raised by several employees about the operation of a certain section. These portions qualify for exemption under section 13(1). One paragraph of the covering memorandum contains an opinion of the author of the report but not "advice or recommendations" and this paragraph does not qualify under section 13(1). The Assistant Commissioner reviewed the list of mandatory exceptions to the exemption contained in section 13(2) of the *Act* and found that none of them apply in the circumstances of this appeal. -

It has also been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not personal information. Therefore, the views and opinions of the author of the report do not qualify as the personal information of this individual. However, information provided by certain other employees to the author of the report about another individual do qualify as that individual's personal information. No parts of the record contain the personal information of the appellant/requester.

Once it has been determined that a record contains personal information, section 21(1) of the *Act* prohibits disclosure of this information, except in certain circumstances, to anyone other than the individual to whom the information relates. One such circumstance is if the disclosure does not constitute an unjustified invasion of personal privacy (section 21(1)(f)). In the circumstances of this appeal, the appellant provided no evidence in support of the relevance of any

factors in section 21(2)(a)-(d) which would weigh in favour of finding that disclosure of the personal information would not result in an unjustified invasion of their personal privacy. Therefore, section 21(1) of the *Act* applies to the personal information.

#### SECTIONS CONSIDERED

2, 17(1)(d), 18(1)(c), 19, 21, 67(2)

#### PREVIOUS ORDERS CONSIDERED

48, 113, 118, 139, 141, 157, 161, 210, P-257, P-304, P-326, P-348, P-356, P-402, P-428, P-432, M-97

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### ORDER P-442

#### APPEAL P-9200712

Institution: Ministry of Finance

APRIL 1, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • names • unjustified invasion of • personal privacy • advice to government • solicitor client privilege • public interest override

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### ORDER P-443

#### APPEAL P-9200710

Institution: Ministry of Education

APRIL 1, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • relevant to • fair determination of rights • supplied in confidence • unjustified invasion of • another individual's personal privacy

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### ORDER P-444

#### APPEAL P-9200435

Institution: Ministry of Health

APRIL 2, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

third party information • technical • "supplied" • "in confidence" • economic or other interests

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### ORDER P-445

#### APPEAL P-9200805

Institution: Ministry of Education and Training

APRIL 7, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-446

#### APPEAL P-9200711

Institution: Ministry of the Solicitor General and Correctional Services

APRIL 19, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • highly sensitive • supplied in confidence • unjustified invasion of • another individual's personal privacy • *Young Offenders Act* • federal legislative paramountcy

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### ORDER P-447

#### APPEAL P-911028

Institution: Ministry of Natural Resources

APRIL 20, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

reasonable steps to locate record • personal information • recommendations or evaluations • highly sensitive • supplied in confidence • *Public Service Act* • relevant to • fair determination of rights • presumption of • unjustified invasion of • another individual's personal privacy

The Ministry received a request for access to records relating to an investigation of an allegation of sexual harassment. Specifically, the request was for the questions asked and responses provided by all persons interviewed which were used to determine the result of the investigation. The requester is the individual who was accused of sexual harassment. The Ministry identified a number of typewritten



summaries and handwritten notes of interviews with several individuals as responsive to the request. Prior to making its decision, the Ministry notified the individuals who were interviewed of the request. Five persons consented to disclosure of the information relating to them. The Ministry provided access to the notes of the requester's own interview and partial access to notes of interviews with other individuals. Access to the remaining information was denied pursuant to section 49(b) of the *Act*. The requester appealed the Ministry's decision to deny access to parts of the record and stated that he believed additional records existed.

Notice that an inquiry was being conducted to review the Ministry's decision was sent to the requester/appellant, the Ministry, the person who alleged that the sexual harassment had occurred (the complainant) and seven of the eight persons who had been interviewed during the course of the investigation (the interviewees). One of the interviewees had died since the interviews were conducted.

#### ORDER

The Inquiry Officer found that the search conducted by the Ministry was reasonable in the circumstances of the appeal. The decision of the Ministry not to disclose portions of the records to the appellant was partially upheld.

#### Section 2 - Personal Information

The Inquiry Officer first determined whether the records at issue contained personal information. In her view, all of the records consist of recorded information about the appellant. In addition, parts of each record consists of recorded information about the complainant and parts of some of the records consist of recorded information about other identifiable individuals, including the interviewees. With respect to the one

interviewee who had died since the interviews were conducted, the Inquiry Officer concluded that section 2(2) of the *Act* did not apply because the death of the interviewee had occurred within the past 30 years.

#### Section 49(b)

Section 49(b) states that a head may refuse to disclose, to the individual to whom the information relates, personal information, where the disclosure would constitute an unjustified invasion of another individual's personal privacy. If the head determines that the release of the information would constitute such an unjustified invasion, then section 49(b) gives the head the discretion to deny the requester access to his/her own personal information. In this case, the Ministry received the consent of six of the interviewees to disclose their personal information to the requester/appellant. In addition, one of the interviewees indicated in his representations to the Inquiry Officer that he consents to the disclosure of his personal information to the requester/appellant. In the view of the Inquiry Officer, disclosure of the personal information of these 7 individuals would not constitute an unjustified invasion of their privacy and section 49(b) does not apply.

Remaining at issue are the parts of the typewritten summaries and notes of interviews where no consent has been obtained for its disclosure.

Sections 21(2) and 21(3) provide some guidance in determining whether disclosure would result in an unjustified invasion of personal privacy. The Ministry argues that the disclosure of the personal information is presumed to constitute an unjustified invasion of personal privacy because the personal information consists of personal recommendations or evaluations, character references or per-

sonnel evaluations (section 21(3)(g)). In the opinion of the Inquiry Officer, the terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards. The records at issue contain opinions, comments and observations provided by the complainant and the interviewees during the course of the investigation. They do not consist of "personal" or "personnel" evaluations. Therefore, the presumption of an unjustified invasion of personal privacy contained in section 21(3)(g) does not apply.

The Ministry and the complainant claimed that sections 21(2)(f), (h), (g), (e) are relevant. The appellant contends that section 21(2)(d) is relevant. These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence.

#### Section 21(2)(f)

In the opinion of the Inquiry Officer, information pertaining to normal everyday working relationships and workplace

conduct is not highly sensitive (section 21(2)(f)). However, when an allegation of harassment is made and investigated, it is reasonable for the parties involved to restrict discussion of workplace relationships and conduct and to find such information distressing in nature. Nevertheless, it is not possible for such an investigation to proceed if the complaint is not made known to the respondents and the direct response to the allegations made in the complaint is not made known to the complainant. Section 21(2)(f) is relevant in the circumstances of this appeal, but only to the personal information of persons other than the appellant which does not directly address the substance of the complaint and to which the individual has not consented to disclosure.

#### Section 21(2)(g)

Although the Ministry stated that comments made by the interviewees may not be accurate or reliable (section 21(2)(g)), the Inquiry Officer had no evidence before her to suggest that the Ministry was able to discount or did not rely on this information. Therefore, section 21(2)(g) is not a relevant consideration in the appeal.

#### Section 21(2)(h)

The Ministry argued that given the sensitive nature of the issues involved, comments made by the interviewees were implicitly given in confidence (section 21(2)(h)). In the Inquiry Officer's view, it is neither practical nor possible to guarantee complete confidentiality to every party during an internal investigation of allegations of this nature. If the parties to a complaint are to have any confidence in the process, respondents in such a complaint must be advised of what and by whom they are accused in order that they may address the validity of the complainant's allegations. In the Inquiry Officer's opinion, section 21(2)(h) of the *Act* is a relevant consideration only with regard

to the personal information of persons other than the requester/appellant who have not consented to disclosure, and then, only to information which does not directly address the substance of the sexual harassment complaint.

#### Section 21(2)(e)

The complainant claims that section 21(2)(e) of the *Act* applies to exempt the records from disclosure because of a fear of retaliation. The Inquiry Officer found that the complainant had not provided sufficient evidence to establish a direct connection between disclosure of the record and the harm described in section 21(2)(e). Therefore, section 21(2)(e) is not a relevant consideration.

#### Section 21(2)(d)

The appellant submits that section 21(2)(d), fair determination of rights, is relevant because the investigation culminated in proceedings under the *Public Services Act* and resulted in disciplinary action against him. Section 21(2)(d) is a relevant consideration, as the appellant established each part of a four part test for the application of this section, set out in Order P-312.

In discussing the relevance of section 21(2)(d), the Inquiry Officer commented that the fact that an alternate means of disclosure is available at a certain stage in another type of proceeding, does not rule out potential disclosure under the *Freedom of Information and Protection of Privacy Act*.

In summary, the Inquiry Officer found that sections 21(2)(d), (f) and (h) are relevant considerations in the circumstances of this appeal. However, sections 21(2)(f) and (h) are relevant only with regard to information provided by individuals other than the appellant who have not consented to disclosure where it

does not directly concern allegations made by the complainant.

The Inquiry Officer found that disclosure of the personal information about the complainant which was provided by the interviewees would constitute an unjustified invasion of the complainant's personal privacy and, therefore, section 49(b) applies. In addition, she found that disclosure of the personal information of individuals other than the appellant which is not directly concerned with the allegations being investigated would also constitute an unjustified invasion of personal privacy and section 49(b) applies.

The Inquiry Officer acknowledged that disclosure of the personal information of the complainant person and certain other individuals may invade their personal privacy to a degree. However, in balancing the interest of the appellant in disclosure and the interest of the primary and the secondary affected persons in the protection of their privacy, she found that, in these circumstances, disclosure of the personal information would not constitute an unjustified invasion of their personal privacy.

The Inquiry Officer commented that investigations into allegations of sexual harassment must be carried out with meticulous fairness to all involved, the complainant, the person complained against and any witnesses who may be interviewed. An improper finding of sexual harassment can have a significant consequence for the person against whom the finding is made. It may impair the ability of that person to advance in his/her employment, or in fact prevent him/her from obtaining employment.

#### SECTIONS CONSIDERED

2, 49(b)

#### PREVIOUS ORDERS CONSIDERED

37, 139, 182, P-312, M-82



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**ORDER P-448**  
**APPEAL P-9200658**

Institution: Ministry of Transportation

APRIL 23, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • right of correction

The Ministry received a request for correction of personal information relating to the requester. The Ministry wrote to the requester seeking clarification of the request in order to determine which records and which statements within the records were to be corrected and the nature of the corrections sought by the appellant. The appellant identified the records as a two page excerpt from a Special Investigation Report dated April 1990 which had been prepared by a senior enforcement investigator for the Ministry. The appellant listed five requested corrections to the excerpt from the report. In its decision letter the Ministry advised the appellant that his personal information in the report had been corrected. An amended copy of the excerpt was attached to the decision with an internal memo explaining the Ministry's position on the requested corrections.

The record at issue consists of the title page and parts of two pages of the Special Investigation Report. The report concerns an investigation into the complaints about the mechanical condition of certain public transit buses. The excerpted parts of the two pages of the report relate to the investigation of a particular incident involving a bus driven by the requester/appellant in the course of his employment.

**ORDER**

The Ministry's decision was upheld.

Section 2 - Personal Information

In order to determine whether the Ministry's processing of the appellants request for a correction of personal information is in accordance with the *Act*, the Inquiry Officer must first determine whether the information at issue is the personal information of the requester/appellant. The Inquiry Officer found that only certain information related to the requester/appellant and satisfied the definition of personal information under section 2(1) of the *Act*. One piece of information is a reference to a possible operating error committed by the requester/appellant while applying the brakes of the bus he was driving. Another piece of information concerns a reference to the existence of a letter of reprimand against the requester/appellant. The remaining information in the record is not personal information about the requester/appellant, rather it is general information concerning the investigation of complaints conducted by the Ministry regarding certain mechanical defects on vehicles owned by the requester/appellant employer.

Section 47(2)

The Ministry responded to the requester/appellant request for correction by deleting all reference to whether the requester engaged or disengaged the brakes and by deleting the statement which referred to the letter. The requester/appellant stated that deletion of the information from the record is not an acceptable method of correction, however, he did not indicate the method he prefers.

In the Inquiry Officer's view, the appropriate method of correction of personal information should be determined by taking into account: the nature of the record; the method, if any, indicated by the requester; and the most practical and reasonable method in the circumstances. In this appeal, in the absence of any

specific method of correction requested by the requester/appellant, the Ministry chose to delete the disputed statements from the record. The Inquiry Officer found that the Ministry has corrected the personal information and that deletion of the disputed statement from the record was an appropriate method of correction in the circumstances of this appeal.

**SECTIONS CONSIDERED**

2(1), 47(2)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER M-86**

**APPEAL M-9200179**

Institution: The Municipality of Metropolitan Toronto

FEBRUARY 17, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • solicitor client privilege • in contemplation of or for use in litigation

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**ORDER M-87**

**APPEAL M-9200180**

Institution: The Corporation of the City of Cambridge

FEBRUARY 17, 1993

(INQUIRY BIG CANOE)

**KEYWORDS**

third party information • technical  
• "supplied" • "in confidence"

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**ORDER M-88**

**APPEALS M-9200150 AND  
M-9200194**

Institution: Ottawa Board of Commissioners of Police

FEBRUARY 19, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

police records • reasonable steps to locate record • personal information • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy

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### ORDER M-89 APPEAL M-9200406

Institution: Ottawa-Carleton Regional  
Transit Commission

FEBRUARY 26, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record • record does not exist

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### ORDER M-90 APPEAL M-9200127

Institution: The Corporation of the Town of  
Markham

FEBRUARY 26, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

content of decision letter • economic or other interests • final plan or proposal

The Town received a request for access to the Insurance Advisory Organization Report on the current operational status of the Fire Department and the M. Dillon Report concerning the location of the fire stations in the Town. The Town denied access to the records, claiming section 11(f) of the *Act*. The Insurance Advisory Organization Report consists of a three page letter with 4 attachments; "Survey Recommendations", "Water Supply", "Fire Department - Fire Suppression Forces" and a three page table. The report concerning the location of fire stations is made up of a title page, a table of contents, 12 chapters, a two page table and 64 pages of figures. Access to both reports was denied pursuant to section 11(f), (e) and (g).

#### ORDER

The decision of the Town was partially upheld.

#### Content of Decision Letter

In his representations, the appellant states that the Town has not complied with section 22 of the *Act* because it failed to include the reasons the exemptions apply to the exempted records. The Inquiry Officer dealt with this issue as a preliminary matter because the Town's decision letter simply cites the wording of sections 11(e), (f) and (g) without further reasons for applying the exemptions, the Inquiry Officer found that this is not sufficient to satisfy the requirements of section 22(1) of the *Act*. However, the Inquiry Officer went on to say that she did not see any purpose in ordering the Town to provide a proper notice of refusal letter at this stage of the appeal.

#### Section 11(e)

In order for records to qualify under section 11(e), the Town must establish that the records meet four criteria. The first criteria to be met is that the record contains positions, plans, procedures, criteria or instructions. The Inquiry Officer reviewed the records and in her view, they did not contain positions, plans, procedures, criteria or instructions. Both records represent the reported result of two studies in relation to the fire defences for the Town. Both contained recommendations based on observations made and data collected. The Town's submission that "release of these records could also severely prejudice present and future contract negotiations with Town fire fighters" is insufficient to establish that the records meet the second and third criteria which require that the Town establish that the records must be intended to be applied to negotiations and that the negotiations must be carried on currently or will be carried on in the future. Therefore, section 11(e) test has

not been satisfied and the records do not qualify for exemption under that section.\*

#### Section 11(f)

In order to qualify for exemption under section 11(f), the Town must establish each element of a three part test. First it must be established that the record contains a plan or plans. In the absence of sufficient representations setting out the facts and circumstances supporting the Town's position, the Inquiry Officer's consideration of the application of the exemption was limited to examining any relevant information that might be contained in the records themselves. Having examined the records, the Inquiry Officer concluded that they do not contain the sort of detailed methods, schemes or designs that are characteristic of a plan. It is evident from the review of the records that the authors did not intend them to be used as a plan but rather as records which provide advice for developing a plan or plans to resolve the issues identified. Therefore, the first requirement of the test for exemption under section 11(f) has not been satisfied and the section does not apply to the records at issue.\*

#### Section 11(g)

In order for records to qualify for exemption under section 11(g), the Town must establish each element of a two part test. The first element of the test is that the record contains information including proposed plans, policies or projects. The Inquiry Officer reviewed the records and in her view, they do not contain the type of information necessary to satisfy the first part of the test. It was also the Inquiry Officer's view that the evidence provided by the Town was not sufficient to establish the harm specified in section 11(d). Therefore, the records do not qualify for exemption under this section.\*





\* See full-text order for complete description of the test.

#### SECTIONS CONSIDERED

11(e), (f), (g)

#### PREVIOUS ORDERS CONSIDERED

158, P-219, P-229, P-346, M-77

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### ORDER M-91

#### APPEAL M-9200003

Institution: Lincoln County Board of Education

MARCH 2, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

economic or other interests • examination questions • third party information • trade secret

The Board received a request for access to information relating to an "intellectual assessment" of a student. The student and her parents all signed the request. The Board released some responsive records, but denied access to three records, the answer booklet for the intelligence test, a document entitled "Creativity Measure" and an "information checklist for referral for giftedness assessment". This information was denied pursuant to section 11(h) of the *Act*.

During mediation, additional information was released to the requester/appellant. The only information which remained at issue consists of portions of 14 pages from the student's test answer booklet. The answer booklet contains the student's answers and scores, the examiner's comments and the suggested correct answers. The appellant narrowed the scope of the request to include only the student's answers and scores and the examiner's comments. Therefore, the suggested correct answers are outside of the scope of the appeal.

#### ORDER

The Board was ordered to disclose the portions of the record which include the student's answers and scores and the examiner's comments.

#### Section 11(h)

Section 11(h) states that a head may refuse to disclose a record that contains questions that are to be used in examination or test for an educational purpose. In the Assistant Commissioner's view, the portions of the record which remain at issue do not contain "questions that are to be used in examination or test" and he found that section 11(h) does not apply in the circumstances of this appeal.

#### Section 10(1)

During mediation, the Board also raised the application of section 10(1) to the remaining portions of the record. In order to qualify for exemption under section 10, each part of a three part test must be satisfied. The first part of the test states that the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.\*

The Board did not identify which of the various types of information listed in section 10(1) it feels are contained in the record. The representations appear to suggest that the test questions are trade secrets and focus on the rationale for denying access to test questions and the ability to infer these questions from the release of the suggested correct answers. Because neither the questions nor the suggested correct answers to the questions are at issue in the appeal, the Assistant Commissioner found that it was not necessary for him to consider whether the suggested correct answers qualify as a trade secret for the purposes of section 10(1). The student's answers to the questions and the examiner's comments are clearly not trade secrets and the por-

tions of the record which remain at issue do not contain any of the other types of information listed in section 10(1). Therefore, this exemption does not apply to the record.

\* See full-text order for complete description of the test.

#### SECTIONS CONSIDERED

11(h), 10(1)

#### PREVIOUS ORDERS CONSIDERED

36, M-10

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### ORDER M-92

#### APPEAL M-9200303

Institution: Town of Ajax

MARCH 2, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

economic or other interests • plans • competitive position

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### ORDER M-93

#### APPEAL M-9200401

Institution: Hamilton-Wentworth Regional Board of Commissioners of Police

MARCH 2, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

reasonable steps to locate record

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### ORDER M-94

#### APPEALS M-9200429 AND M-9200430

Institution: City of Toronto

MARCH 4, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

third party information • financial • technical • "supplied" • "in confidence" • reasonable expectation of • harm • *Copyright Act*

The City received a request for access to the "life safety study on the Riverdale

Hospital building". Pursuant to section 21 of the *Act*, the City notified six persons whose interests could be affected by disclosure of the requested information and invited them to make representations concerning the release of the study. The City received representations from two of these individuals. Despite their objections to disclosure, the City decided to release the study to the requester in its entirety. The two individuals who made representations appealed the City's decision to grant access to the requester.

#### ORDER

The City's decision to disclose the record was upheld.

#### Section 10(1)(d)

One of the appellants submitted that "the hospital is already experiencing labour related repercussions to the proposed project and we feel that disclosure at this time could jeopardize the process that is underway to resolve those issues (see section 10(1)(d))". In the Inquiry Officer's view, the information contained in the record cannot accurately be characterized as information "supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute". Therefore, section 10(1)(d) has no application. However, the Inquiry Officer went on to discuss the application of sections 10(1)(a), (b) and (c).

#### Sections 10(1)(a), (b) and (c)

In order for the documents to qualify for exemption under section 10(1), each part of a three part test must be met.

The Inquiry Officer found that the information in the record is technical and financial in nature. Thus, the first part of the three part test is met. The second part of the test requires that the information be supplied to the City in

confidence, either implicitly or explicitly. The representations and submissions of the appellants did not address whether the record was supplied in confidence and there is no mark or evidence on the face of the record which would indicate confidentiality. Therefore, in the Inquiry Officer's view, part two of the test has not been met. The third part of the test requires the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in section 10(1)(a), (b) or (c) will occur. Although one of the appellants submitted that "the hospital is currently in the midst of the tendering process and ... any publication of information concerning this study could be prejudicial to the timely completion of the project", no evidence as to why the expectation of harm may reasonably be expected to result from the disclosure of the record has been provided. Therefore, the third part of the test has not been met. Because neither parts two or three of the test has been met, the appellants have not established that the exemption provided by section 10(1) of the *Act* applies.\*

#### Copyright

One of the affected parties also argued that the document in question is a "copyright" document and as such, may not be copied in part or in whole without consent of the authors. Providing access to information under the *Municipal Freedom of Information and Protection of Privacy Act* does not constitute an infringement of copyright. Specifically, sections 27(2)(i) and (j) of the *Copyright Act* provide that disclosure of information pursuant to the *Federal Access to Information Act* or any like act of the legislature of a province does not constitute an infringement of copyright.

\* See full-text order for complete description of the test.

#### SECTIONS CONSIDERED

10(1)(a), (b), (c), (d)

#### PREVIOUS ORDERS CONSIDERED

36, M-10, M-29

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#### ORDER M-95

##### APPEAL M-9200304

Institution: Metropolitan Toronto Board of Commissioners of Police

MARCH 9, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • another individual's personal privacy

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#### ORDER M-96

##### APPEAL M-910462

Institution: Wellington County Board of Education

MARCH 9, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • relevant to • fair determination of rights • presumption of  
• unjustified invasion of • personal privacy

The President of the Ontario Secondary School Teachers Federation -District 39 submitted a request to the Board for access to the home phone number of Federation members. The Board denied access to the record containing the phone numbers claiming that disclosure would be an unjustified invasion of privacy.

During the course of processing the appeals, suggestions were made that the Federation seek the consent of its members to the release of their home phone numbers. The Federation declined to do so and both the Federation and the Board ultimately decided that the appeal should be resolved through the issuance of an order.



Both parties agreed that the home phone numbers qualify as personal information as defined in section 2(1) of the *Act*. Therefore, the sole issue in the appeal is whether the mandatory exemption provided by section 14 of the *Act* applies to the home phone numbers of permanently or regularly employed Federation members.

#### ORDER

The decision of the Board not to disclose the phone numbers was upheld.

Section 14(1) of the *Act* prohibits disclosure of personal information except in certain circumstances. One such circumstance is if the disclosure of the personal information does not constitute an unjustified invasion of personal privacy. Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In this appeal, the parties agreed that section 14(3) is not relevant. Section 14(2) provides some criteria to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Some of the factors listed under section 14(2) favour disclosure of the records and some favour protection of personal privacy. Section 14(2)(d) states that a head shall consider whether the personal information is relevant to a fair determination of rights affecting the person who made the request. Although the Federation states that the personal information is relevant because it affects its rights, it has not identified these rights or demonstrated how disclosure of the personal information is relevant to a fair determination of these rights. Section 14(2)(d) presupposes that there is or will be a proceeding in which the requester's rights

are to be determined. The Federation did not identify any proceeding in which its rights are being determined or where the disclosure of personal information would be relevant to a fair determination of these rights.

The list of factors in section 14(2) is not exhaustive and the Federation has raised a number of additional factors which are not listed. In the Assistant Commissioner's view, the fact that the requester is a Federation which acts as bargaining agent on behalf of its members cannot be a relevant factor in determining whether disclosure of personal information will constitute an unjustified invasion of personal privacy. Disclosure of a record under Part I of the *Act*, is in effect, disclosure to the world and not just to the requester. Therefore the status of the Federation, or the relationship of the Federation to its members, is not a relevant consideration.

The Federation also argues that the home phone numbers should be disclosed pursuant to sections 32(c) and (e) of the *Act*. These sections state that an institution shall not disclose personal information except for the purpose for which it was obtained or compiled or for a consistent purpose (section 32(c)); or for the purpose of complying with an act of the legislature or an act of parliament and agreement or arrangement under such an act or treaty (section 32(e)). Section 32 is contained in Part II of the *Act*. This part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. Therefore, the factors listed in section 32 are not relevant to an access request made under Part I. Accordingly, the mandatory exemption provided by section 14(1) ap-

plies and the phone numbers should not be released.

#### SECTIONS CONSIDERED

14(1)(f), 14(2)(d), 32(c), 32(e)

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-97 APPEAL M-9200203

Institution: Belleville Board of  
Commissioners of Police

MARCH 9, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • name • deceased  
person • presumption of • unjustified  
invasion of • personal privacy

The Police received a request for access to the name of a deceased person whose body was found in a field. The Police provided the requester with partial access to a record entitled "Sudden Death Report", which set out particulars of the discovery of the body, but denied access to the name and other identifying particulars of the deceased, the individuals who discovered the body and the officers who attended at the scene. The Police severed this information on the grounds that disclosure of the severed portions would constitute an unjustified invasion of privacy under section 14 of the *Act*. The requester only appealed the decision of the Police to deny access to the name of the deceased.

#### ORDER

The decision of the Police not to disclose the name of the deceased person was upheld.

#### Section 2 - Personal Information

In this instance, the name of the deceased person appears with other personal information of that individual which had already been disclosed to the requester/

appellant. This includes the date and the time and place of discovery of the deceased person. Disclosing the deceased person's name would have the effect of revealing other personal information about that individual. Therefore, in these particular circumstances of this appeal, the Inquiry Officer found that the name of the deceased person qualifies as personal information within the meaning of section 2(1) of the *Act*.

Section 2(2) has no application in these circumstances because the death occurred within the past 30 years.

#### Section 14(1)

Section 14(1) is a mandatory exemption which prohibits the disclosure of personal information except in certain circumstances. Section 14(1)(f) is one such circumstance. It states that personal information shall not be disclosed except if the disclosure does not constitute an unjustified invasion of personal privacy. In the circumstances of this appeal, the only representations which the Inquiry Officer received weigh in favour of finding that section 14(1)(f) does not apply. In the absence of any evidence or argument weighing in favour of finding that disclosure of the personal information would not constitute an unjustified invasion of personal privacy, the Inquiry Officer found that the exception contained in section 14(1)(f) does not apply. Therefore, the exemption found in section 14(1) applies to the information.

#### SECTIONS CONSIDERED

2(1), 2(2), 14(1)(f)

#### PREVIOUS ORDERS CONSIDERED

None

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### ORDER M-98 APPEAL M-9200431

Institution: Halton Region Board of Commissioners of Police

MARCH 10, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

meeting • substance of deliberations • law enforcement • investigation • report  
• personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • personal privacy

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### ORDER M-99 APPEAL M-9200349

Institution: The Cochrane, Iroquois Falls, Black River-Matheson District Roman Catholic Separate School Board

MARCH 10, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • resumé  
• employment history • education history  
• presumption of • unjustified invasion of  
• personal privacy

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### ORDER M-100 APPEAL M-9200154

Institution: The Carleton Roman Catholic Separate School Board

MARCH 10, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

reasonable steps to locate record • personal information • danger to safety or health

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### ORDER M-101 APPEAL M-910422

Institution: The Carleton Roman Catholic Separate School Board

MARCH 10, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

discretion

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### ORDER M-102 APPEAL M-910417

Institution: Regional Municipality of York Police Services Board

MARCH 11, 1993

(COMMISSIONER WRIGHT)

#### KEYWORDS

meeting • absence of the public • *Police Services Act* • advice to government  
• personal information • salaries  
• presumption of • unjustified invasion of  
• personal privacy • public interest  
override

The Board received a request for access to information respecting the salary and benefits of the Chief of Police and the Deputy Chief of Police. The Board denied access pursuant to section 6(1)(b), 7(1) and 14(3)(f) of the *Act*. Since section 14(4)(a) provides that disclosure of salary ranges does not constitute an unjustified invasion of personal privacy, during mediation, the Board was asked to consider disclosing salary ranges as a means of settling the appeal. The Board indicated that there were no salary ranges for the two positions. After the matter was considered at a Board meeting, the Board refused to establish salary ranges. During the inquiry stage of the appeal, the Board agreed to disclose the benefits information. The records which remained at issue are: an excerpt from a 1991 Board meeting; a letter from the Chief of Police to the Board; and a memorandum from the Board's secretary to the payroll department regarding salaries.

#### ORDER

The Board was ordered to prepare a salary range for the positions occupied by the Chief and Deputy Chief of Police and to disclose the ranges to the requester/appellant.



## Section 6(1)(b)

In order to qualify for exemption under section 6(1)(b), the Board must meet each part of a three-part test. The Board must establish that: a meeting of a council, board, commission or other body or a committee of one of them took place; and a statute authorizes the holding of this meeting in the absence of the public; and disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.\* There is no doubt that a meeting of the Board took place. Section 35(4) of the *Police Services Act* gives the Board the discretion to exclude members of the public from all or part of a meeting. Since meetings in the absence of the public are such a departure from the norm, there must be clear and tangible evidence that the meeting or parts of it were actually held in camera. For example, evidence could consist of a notation in the minutes of a meeting that a decision was made that the public be excluded while a particular agenda item was discussed. In the circumstances of this appeal, there is no indication in the minutes themselves that the meeting or any part of it was actually held in camera. The fact that some of the records have been stamped "in camera", in itself, is not sufficient to establish that the meeting or part of it was held in camera. Therefore, exemption found in section 6(1)(b) does not apply.

## Section 7

Section 7(1) of the *Act* states that a head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution. "Advice" pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient in the deliberative process. Recommendations should be viewed in the same vein. This exemption

purports to protect the free flow of advice and recommendations within the deliberative process of government decision making and policy making. In the Commissioner's view, the information contained in the letter from the Chief of Police to the Board does not constitute advice or recommendations within the meaning of section 7 of the *Act*. A decision about two individuals' salaries is not part of the deliberative process of government decision-making or policy-making. Rather, it is a routine decision about an employee or group of employees. The letter is more appropriately characterized as a request by an employee regarding his salary and that of a fellow employee. Although the persons responsible for approving the salaries may have considered the employee's request, such a request does not constitute advice or recommendations. Therefore, the letter does not qualify for exemption under section 7(1).

## Section 2 - Personal Information

The information about the Chief and Deputy Chief salary is clearly information about those individuals and comes within the definition of personal information contained in section 2(1) of the *Act*.

## Section 14

Section 14(1) of the *Act* is a mandatory exemption that prohibits the disclosure of personal information except in certain circumstances. One such circumstance is set out in section 14(1)(f) of the *Act* which states that a head shall refuse to disclose personal information except if the disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy. Section 14(3) lists the types of information the disclosure of which is presumed to constitute

an unjustified invasion of personal privacy. Section 14(3)(f) states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information describes an individual's finances income, etc.. Because the personal information contained in the record describes an individual's income, disclosure of the personal information would constitute a presumed unjustified invasion of personal privacy. Section 14(4) of the *Act* outlines a number of circumstances which if they exist could operate to rebut a presumption under section 14(3). Section 14(4)(a) states that despite subsection 3, a disclosure does not constitute an unjustified invasion of personal privacy if it discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution. In this appeal, section 14(4)(a) does not apply to rebut the presumption contained in section 14(3)(f) as the information at issue is the actual salary of each affected party, not their range of salary.

After the inquiry process had begun, the appellant sent the Commissioner a letter which purported to contain the information he was requesting. However, the Commissioner was of the view that the information contained in the letter is not a relevant consideration. The appellant also stated that salaries of public figures should be available to the public thus raising the possible application of section 14(2)(a). Without considering whether this section applies, the Commissioner was of the view that the application of this factor alone would not be sufficient to rebut presumption.

Section 16 of the *Act* states that an exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if compelling public interest in

the disclosure of the record clearly outweighs the purpose of the exemption. The Commissioner referred to Order M-18, in which he considered the application of section 16 in the context of an appeal involving salary information. In that order, he stated that the intent of the legislature is clear on the balancing of rights - the right to access must be balanced by the right of an individual to the protection of his/her personal privacy. Neither right is without limits, which limits are also provided for in the *Act*. In that context, the Commissioner was not convinced that a compelling public interest in the disclosure of the exact salaries exist, such as to outweigh the purpose of the section 14(1) exemption.

However, the Commissioner went on to say that section 14(4)(a) reflects the fact that even though disclosure of an exact salary is a presumed unjustified invasion of personal privacy, disclosure of a salary range is not. Section 14(4)(a) is a clear indication by the legislature that disclosure of salary ranges is in the public interest. That section is a reflection of the view of the legislature as to where the appropriate balance between the right to know and the right to privacy should be struck in the case of salaries of employees of taxpayer funded entities.

The requester/appellant should be allowed access to some information relating to the salaries of the Chief and Deputy Chief. To do otherwise would create an absurdity. It would mean that if an institution wanted to be less open in the area of salary information, it could achieve this by the simple expedient of not having salary ranges for its employees. Since the potential disclosure of exact salaries have the benefit of a presumed unjustified invasion of personal privacy, it is unlikely, in most circumstances, that any salary related information would be available to the public. In the Commission-

er's view, this is not the result which was intended by the legislature. Pursuant to section 43(3) of the *Act*, the Commissioner ordered the Board to prepare salary ranges and to disclose them to the requester/appellant.

\* See full text order for complete description of the test.

#### SECTIONS CONSIDERED

6(1)(b), 7(1), 2(1), 14(3)(f), 14(4)(a), 16

#### PREVIOUS ORDERS CONSIDERED

94, 118, P-332, P-348, P-352, M-6, M-7, M-18, M-64, M-69, M-71

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### ORDER M-103 APPEAL M-9200147

Institution: The Norfolk Board of Education

MARCH 11, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

fees • estimate • interim decision

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### ORDER M-104 APPEAL M-9200218

Institution: Windsor Board of Education

MARCH 24, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

#### KEYWORDS

personal information • unjustified invasion of privacy

The Board received a request for access to records relating to a student attending a school within the Board's jurisdiction. The requester is the student's natural father. The student was under the age of 16 at the time the request was made. The Board identified a number of responsive records and denied access pursuant to section 14(1) of the *Act*. During the course of mediation, the scope of the appeal was narrowed by the parties to one record, a hard copy of a "registration maintenance screen" for the student. This record is a computer print out which

identifies the individuals the Board should contact in an emergency. It lists the name of the student, the address and telephone number of the student's mother and her mother's spouse and certain additional information concerning the student's living and guardianship arrangements. The student, her mother and her mother's spouse all refused to consent to the release of the record.

#### ORDER

The Board's decision not to disclose the record was upheld.

#### Section 54(c)

The Assistant Commissioner dealt with the preliminary issue regarding the application of section 54(c) of the *Act*. This section addresses the rights of certain individuals as they relate to children under the age of 16. It states that any right or power conferred on an individual by the *Act* may be exercised, if the individual is less than 16 years of age, by a person who has lawful custody of the individual. During the course of the appeal, the requester/appellant submitted a copy of a divorce decree which makes it clear that he does not have "lawful custody" of the student. Therefore, section 54(c) does not apply.

#### Section 2 - Personal Information

The record at issue contains the address and telephone numbers of the student's mother and her mother's spouse, as well as certain information containing the student's living and guardianship arrangements. In the Assistant Commissioner's view, this information qualifies as a personal information of the student, her mother and her mother's spouse. None of the information is the personal information of the appellant.



## Section 14

Section 14(1) of the *Act* prohibits disclosure of personal information except in certain circumstances. One such circumstance is contained in section 14(1)(f) of the *Act* which states that the head shall refuse to disclose personal information except if the disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. None of the parties to the appeal raised any of the presumptions contained in section 14(3). Therefore, that section is not relevant in the circumstances of the appeal. Section 14(2) lists factors which may be considered in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. None of the parties refer specifically to any of these factors, however, because the list is not exhaustive, the Assistant Commissioner considered other factors raised by the various parties.

The requester/appellant argued that the student is a minor and as her natural father, he is entitled to information concerning her well being. He further argued that the divorce decree grants him the right to make reasonable inquiries and to receive information as to health, education, etc. regarding the children, regardless of their age or custody. After carefully reviewing the record and the representations, in the Assistant Commissioner's view, the reasons submitted by the appellant in favour of disclosure are not sufficient to overcome the mandatory exemption provided by section 14(1) of the *Act*. In order for the Assistant Commissioner to find that section 14(1)(f) exception applies, he must find that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. In the Assistant

Commissioner's view, the appellant/requester failed to provide evidence sufficient to raise this exception, either with respect to personal information of the student, her mother or the mother's spouse. Therefore, the record qualifies for exemption under section 14(1) of the *Act*.

### SECTIONS CONSIDERED

54(c), 2(1), 14(1)(f)

### PREVIOUS ORDERS CONSIDERED

None

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## ORDER M-105

### APPEAL M-9200443

Institution: Regional Municipality of Ottawa-Carleton

MARCH 15, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

law enforcement • investigation • report  
• *Health Protection and Promotion Act*

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## ORDER M-106

### APPEAL M-9200140

Institution: Norfolk Board of Education

MARCH 25, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information

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## ORDER M-107

### APPEAL M-9200146

Institution: Norfolk Board of Education

MARCH 25, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

delegation of power or duty • personal information

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## ORDER M-108

### APPEAL M-9200069

Institution: Norfolk Board of Education

MARCH 25, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

delegation of power or duty • personal information

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## ORDER M-109

### APPEAL M-9200208

Institution: Regional Municipality of Waterloo

MARCH 26, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

personal information • supplied in confidence • unjustified invasion of • personal privacy

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## ORDER M-110

### APPEAL M-9200123

Institution: Palmerston Police Service

MARCH 31, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

personal information • unjustified invasion of • another individual's personal privacy

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## ORDER M-111

### APPEAL M-9200258

Institution: Regional Municipality of York Police Services Board

MARCH 29, 1993

(ASSISTANT COMMISSIONER MITCHINSON)

### KEYWORDS

reasonable steps to locate record

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## ORDER M-112

### APPEAL M-910445

Institution: The Regional Municipality of Ottawa-Carleton

MARCH 30, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

reasonable steps to locate record

## ORDER M-113 APPEAL M-9200246

Institution: Halton Board of Education

MARCH 31, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • personal opinions  
or views • address • unjustified invasion of  
• personal privacy

The Board received a request for access to a copy of the rationale which a named individual provided to the Board regarding his three motions on the Key Communicator Program. The Board invited the individual to make representations as to why the record or parts thereof should not be disclosed. Despite the individual's objection to disclosure, the Board decided to grant access to the record. The individual appealed the Board's decision. The record responsive to the request is a three-page document entitled "Background to Key Communicator Motion of January 15, 1992" and is identified as background material to a motion made by the appellant within his responsibilities as trustee in a public board meeting.

### ORDER

The decision of the Board to disclose the information was upheld with the exception of the appellant's home address.

### Section 2 - Personal Information

In the Inquiry Officer's view, the appellant's views and opinions about the Board program were expressed in his capacity as a public elected official and are not "personal" opinions or views. These views and opinions cannot be categorized as "personal information" as defined in section 2(1) of the *Act*. Part of the record contains the appellant's home address and this part of the record qualifies as the appellant's personal information.

### Section 14

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. One such circumstance is section 14(1)(f) of the *Act* which states that the head shall refuse to disclose personal information except if the disclosure does not constitute an unjustified invasion of personal privacy. Having found that only the appellant's home address qualifies as personal information and in the absence of any representations weighing in favour of finding that the disclosure of the personal information would not constitute an unjustified invasion of personal privacy, the Inquiry Officer found that the exception contained in section 14(1)(f) does not apply and the appellant's home address is properly exempt from disclosure under section 14(1) of the *Act*.

### SECTIONS CONSIDERED

2(1), 14(1)

### PREVIOUS ORDERS CONSIDERED

None

## ORDER M-114 APPEAL M-9200247

Institution: Halton Board of Education

MARCH 31, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • personal opinions  
or views • address • consent to access to  
• unjustified invasion of • personal privacy

## ORDER M-115 APPEAL M-9200162

Institution: Halton Board of Education

MARCH 31, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • personal opinions  
or views • address • consent to access to  
• unjustified invasion of • personal privacy

The Board received a request for access to documentation distributed to board members and trustees as background to a motion regarding the Key Communicator program. The school trustee who distributed the information was invited by the Board to make representations as to why the records should not be disclosed. Despite the trustee's objection to disclosure, the Board decided to grant access to the records. The trustee appealed the Board's decision. The records responsive to the request are: a document entitled "Background to Key Communicator Motion", a one page letter and a seven page document entitled "A Report on the Key Communicator Program".

### ORDER

The Board's decision to disclose the information was upheld.

### Section 2 - Personal Information

The opinions and views expressed by the appellant in the records are in relation to a Board program and are identified as background material to a motion he made in a public board meeting, within his responsibilities as an elected school trustee. Therefore, they are not "personal" opinions or views. These views and opinions cannot be categorized as personal information as defined in section 2(1) of the *Act*. Views and opinions expressed by the appellant in relation to other individuals are properly considered the personal information of those individuals and do not qualify as a personal information of the appellant. A part of one record contains the appellant's home address and, in the Inquiry Officer's view, only this information qualifies as the appellant's personal information.



## Section 14(1)

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. One such circumstance is upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access (section 14(1)(a)). Each of the persons about whom a view or opinion has been expressed has provided written consent to disclosure of their personal information to the requester. Therefore, section 14(1)(a) applies to the appellant's views and opinions about these individuals. Accordingly, the mandatory exemption provided by section 14(1) of the *Act* does not apply and the information should be disclosed to the requester.

The Inquiry Officer went on to find that the only personal information relating to the requester, namely his home address is properly exempt from disclosure under section 14(1) of the *Act*.

### SECTIONS CONSIDERED

2(1), 14(1)(a), (f)

### PREVIOUS ORDERS CONSIDERED

None

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## ORDER M-116 APPEAL M-910295

Institution: Metropolitan Toronto Police Services Board

MARCH 31, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

designation of head • delegation of power or duty • personal information • personal opinions or views • name • badge number • unjustified invasion of • personal privacy • public scrutiny

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## ORDER M-117 APPEAL M-9200470

Institution: The Corporation of the City of Barrie

MARCH 31, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

economic or other interests • reasonable expectation of harm • final plan or proposal

The City received a request for the notes and scores from each of the Re-Evaluation Committee members who conducted the re-evaluation of the position of the Committee's secretary position. The request was clarified to include the handwritten notes and score sheets of two other persons who, while not voting members of the Committee, were present at the Re-Evaluation Committee meeting and contributed to the process. The City denied access to the records pursuant to sections 11(c), (d), (e), (f) and (g) of the *Act*. The records consist of five one page job evaluation forms completed by the members of the committee and 17 pages of notes taken by them.

### ORDER

The City was ordered to disclose the records to the appellant.

Sections 11(c) and (d)

Section 11(c) states that a head may refuse to disclose a record that contains information whose disclosure could reasonably be expected to prejudice the economic interest of an institution or the competitive position of an institution. Section 11(d) states that a head may refuse to disclose a record that contains information whose disclosure could reasonably be expected to be injurious to the financial interest of an institution. With respect to both sections, the City argued that if the information contained in the records is disclosed, it could be misused to convince an arbitrator to increase the

rate of pay for secretaries in the Clerk's Office. It further submits that such a pay increase could possibly result in corresponding pay increases for many other employees throughout the organization and that this would have a profound impact on the economic interest of the City. The Inquiry Officer found that the evidence provided by the City was not sufficiently detailed and convincing to demonstrate a reasonable expectation of harm. The City failed to make the necessary connection between the disclosure of the information in the records in any specific use or misuse of it that could reasonably be expected to prejudice or harm the City's financial or economic interest. Therefore, the records do not qualify for exemption under sections 11(c) and (d).

In order to qualify for exemption under section 11(e) of the *Act*, the City must meet each part of a four part test. In order to meet the first part of the test the City must establish that the record contains positions, plans, procedures, criteria or instruction. After examining the records, the Inquiry Officer concluded that they do not contain positions, plans, criteria or instruction but rather consist of score sheets and handwritten notes. Since part I of the test has not been met, the records do not qualify for exemption under section 11(e).\*

For a record to qualify for exemption under section 11(f) of the *Act*, the City must establish that a record satisfies each element of a three part test. The first element of the test is that the record must contain a plan or plans. Again, after reviewing the records, the Inquiry Officer noted that they consist of point score sheets and handwritten notes used by the members of the job evaluation committee and others present during the course of two meetings. In his view, the records at issue do not contain a plan or

plans and therefore, do not qualify for exemption under section 11(f).\*

In order to qualify for exemption under section 11(g), the City must establish that the record satisfies each element of a two part test. The Inquiry Officer commented that even if he were prepared to accept that the records contain proposed plans, policies, projects or other similar information (part 1 of the test), he was not persuaded that their disclosure could reasonably be expected to result in any financial loss to the City (part 2 of the test). The City's concern appears to be based on possible misuse of the information by others. Any harm that may accrue to the institution must result from the disclosure of the records themselves rather than any potential harm as a result of the information in the records being misused. Therefore, the records do not qualify for exemption under section 11(g).\*

\* See full-text order for complete description of the test.

#### SECTIONS CONSIDERED

11(c), (d), (e), (f), (g)

#### PREVIOUS ORDERS CONSIDERED

87, 154, 229, M27, M37

### ORDER M-118 APPEAL M-9200186

Institution: City of Toronto

APRIL 16, 1993

(COMMISSIONER WRIGHT)

#### KEYWORDS

personal information • names • addresses  
• unjustified invasion of • personal privacy

### ORDER M-119 APPEALS M-9300001, M-9300002 AND M-9300003

Institution: Durham Region Board of  
Commissioners of Police

APRIL 16, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • relevant to • fair  
determination of rights • unjustified  
invasion of • personal privacy

### ORDER M-120 APPEAL M-9200133

Institution: Metro Toronto Licensing  
Commission

APRIL 16, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • highly sensitive  
• supplied in confidence • relevant to • fair  
determination of rights • unjustified  
invasion of • personal privacy • solicitor  
client privilege • in contemplation of or  
for use • in litigation • advice to  
government

### ORDER M-121 APPEAL M-910332

Institution: Metro Toronto Licensing  
Commission

APRIL 16, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • highly sensitive  
• fair determination of rights • unjustified  
invasion of • personal privacy • severance  
• solicitor client privilege • in  
contemplation of or for use • in litigation

### ORDER M-122 APPEAL M-9200350

Institution: The Northern District School  
Area Board

APRIL 22, 1993

(INQUIRY BIG CANOE)

#### KEYWORDS

personal information • highly sensitive  
• supplied in confidence • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • personal privacy  
• reasonable steps to locate record

### ORDER M-123 APPEAL M-9200336

Institution: The Corporation of the Town of  
Caledon

APRIL 23, 1993

(INQUIRY BIG CANOE)

#### KEYWORDS

reasonable steps to locate record

### ORDER M-124 APPEAL M-9200223

Institution: Ottawa-Carleton Regional  
Transit Commission

APRIL 23, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

### ORDER M-125 APPEALS M-9200391 AND M-9200392

Institution: Durham Region Board of  
Commissioners of Police

APRIL 23, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • compiled as part of  
investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • another  
individual's personal privacy

*\*An application for judicial review has been brought in respect of each of the following orders: P-435, P-447, M-82, M-91 and M-102. The application for judicial review of Order M-22 has been abandoned. Further, the applications for judicial review of Orders P-352 and M-28 have been dismissed by the Divisional Court. The Archivist of Ontario has applied for leave to appeal the Divisional Court's decision dismissing the application for judicial review of Order P-352 to the Ontario Court of Appeal.*





## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1993 TO DATE *	1992 TO DATE *	1992 TOTAL
Provincial	141	167	639
Municipal	114	107	451
Total	255	274	1090

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1993 TO DATE *	1992 TO DATE *	1992 TOTAL
Provincial	209	125	711
Municipal	157	88	411
Total	366	213	1122

METHOD OF CLOSING ACTIVE APPEAL FILES 1992 TOTAL		
	BY ORDER	OTHER THAN BY ORDER
Provincial	53	156
Municipal	44	113
Total	97	269

Numbers are subject to change

\* January 1 - March 31

## COMPLIANCE INVESTIGATIONS

These highlights are prepared for the purpose of convenience only. Please note: investigation numbers are marked "P" to denote provincial investigations and "M" to denote municipal investigations. Keywords are general subject categories which represent the issues discussed in the investigations.

### INVESTIGATION I92-18P

Institution: Ministry of Health

MARCH 9, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

use • disclose • consistent

An employee of the Ministry was suspended due to alleged difficulties with her job performance and complaints received by the Ministry. The employee filed a grievance regarding her treatment during the suspension and the resulting change in her working conditions. During the course of the grievance proceedings, the Ministry conducted an investigation where it disclosed the employee's personal information to other past and present Ministry employees. In order to contact these Ministry employees, the Ministry used their personal information. The employee complained that the disclosure of her personal information and the use of the Ministry employees' personal information were contrary to the *Act*.

#### CONCLUSION

The IPC found that the Ministry employees' personal information—names, telephone numbers and addresses, was obtained or compiled for employment-related purposes. The IPC also found that the personal information was used to contact Ministry employees in order to discuss information about the complainant relating to the time of the employees'

employment with the Ministry. The IPC concluded that the use of the personal information was for a purpose consistent with the purpose for obtaining or compiling the personal information. Further, it was the IPC's view that the employees might reasonably have expected such a use of their personal information. Therefore, the use of the personal information was considered to be for a consistent purpose, and was thus in compliance with section 41(b) of the *Act*.

The IPC determined that the complainant's personal information, i.e. that she had filed a grievance and that allegations of a certain nature had been made against her, was obtained by the Ministry for the purpose of responding to the complainant's grievance and inquiring into the allegations made concerning her. Section 42(c) of the *Act* states that an institution shall not disclose personal information except for the purpose for which it was obtained or compiled. The IPC found that the personal information was disclosed for the purpose of enabling the Ministry to inquire into these allegations and appropriately respond to the complainant's grievance. Therefore, the IPC concluded that the personal information was disclosed for the purpose for which it was obtained or compiled and that the disclosure was in compliance with section 42(c) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 41, 42, 43

### INVESTIGATION I92-30P

Institution: Lieutenant Governor's Board of Review

MARCH 9, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

warrant • disclosure

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

Boards of Education, I92-55M, I92-87M  
A City, I92-88M  
Health Board Secretariat, I92-52P  
Lieutenant Governor's Board of Review, I92-30P  
Liquor Control Board of Ontario, I93-026P  
Ministry of the Attorney General, I92-38P, I92-56/61P  
Ministry of Community and Social Services, I92-56/61P  
Ministry of Consumer and Commercial Relations, I92-39P  
Office of Francophone Affairs, I93-006P  
Ministry of Health, I92-18P  
Ministry of Housing, I92-34P, I93-008P  
Ministry of Transportation, I92-49P, I93-005P  
Municipalities, I92-34M, I92-72M, I92-82M  
A Municipal Licensing Commission, I92-59M  
A Police Force, I92-65M, I92-73M  
A Regional Police Services Board, I92-12M, I93-013M  
A Separate School Board, I92-11M  
A Town, I92-71M  
A Township, I92-64M  
Worker's Compensation Board, I92-53P, I92-71P

An individual complained that the Board had improperly disclosed his personal information when it disclosed a copy of his Lieutenant Governor's Warrant to a Parole Officer-in-Charge, with Correctional Services Canada.

#### CONCLUSION

The IPC concluded that the disclosure of the Warrant in this case was for the purpose of complying with an arrangement under the *Criminal Code* R.S.C. 1985, and thus, was in accordance with section 42(e) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(e), 4(1), 4(2) of O. Reg. 516/90

#### STATUTES CONSIDERED

Sections 617 and 619 of the *Criminal Code* R.S.C. 1985.



## INVESTIGATION I92-34P

Institution: Ministry of Housing

MARCH 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collection • use • disclosure

The complainant, an employee of the Ministry, had been absent from work for several days. The Ministry requested that he submit a medical certificate. Two certificates he provided were judged by the Ministry to contain insufficient information. The Director requested a third medical certificate. The complainant's doctor sent the third certificate directly to the Human Resources Branch, although the Ministry's usual practice was for the employee's supervisor to receive medical certificates.

The Human Resources Advisor assured the doctor that the certificate would be placed in the complainant's personnel file, and would be kept confidential. The Human Resources Advisor told the complainant's manager and supervisor about the complainant's medical condition, and that the doctor had recommended a work transfer.

The Ministry later used the medical certificate as evidence at a hearing to resolve a grievance by the complainant about alleged harassment by the Ministry in placing a certain document in his personnel file. In preparation for the hearing, the supervisor reviewed the documents in the complainant's file, including the medical certificate. The Ministry's position was that this disclosure to the supervisor had been inadvertent. The complainant believed that the Ministry had breached his privacy by using the medical certificate as evidence, and by disclosing the certificate to his supervisor and other employees.

### CONCLUSION

The IPC found that the medical certificate contained the complainant's "personal information" as defined in section 2(1) of the *Act*. The Ministry had not provided proper notice of collection for the personal information in accordance with section 39(2) of the *Act*.

It was determined that the Ministry had used the personal information at the grievance hearing in accordance with section 42(b) of the *Act* (i.e. for a consistent purpose) since the complainant could have reasonably expected that documents in his personnel file would be used if he grieved placement of a document in the file and being harassed.

The medical certificate was not disclosed to the supervisor in accordance with section 42(d) of the *Act* because the supervisor did not need the detailed medical information to perform his job duties. The medical certificate was disclosed to the Director, and to the human resources, payroll, benefits and labour relations staff in accordance with section 42(d) of the *Act*.

### RECOMMENDATION

The IPC recommended that the Ministry:

1. Provide proper notice of collection when it required employees to submit medical information; provide employees with complete and specific instruction, as to what information was required.
2. Develop a procedure to ensure that medical certificates are treated in a confidential manner, and that only employees and officers who need this information in the performance of their duties are given access.
3. Develop a written policy on access to employees' personnel files to ensure that

only employees and officers who need this information in the performance of their duties are given access.

4. Return collections of medical certificates being held by non-human resources staff to the Human Resources Branch in a confidential manner; the Human Resources Branch should ensure that any duplicates are destroyed in a confidential manner.

### SECTIONS CONSIDERED

2(1), 39(2), 41(b), 42(d)

### STATUTES CONSIDERED

*Public Service Act*, s.29(3);  
R.R.O.Reg.977; *Crown Employees Collective Bargaining Act*, s.13, 21

## INVESTIGATION I92-38P

Institution: Ministry of the Attorney General

MARCH 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collection • use • accuracy

The complainant had been ordered by the court to make child support payments, and the order was registered with the Family Support Plan (FSP) for enforcement. The complainant believed that the FSP breached his privacy in the following ways:

1. the FSP had collected and used his OHIP number to gain access to his medical information;
2. the FSP had collected his photograph unnecessarily;
3. the FSP had used an incorrect workplace address in serving garnishment documents, and as a result, information about the garnishment was disclosed in his workplace.

## CONCLUSION

The IPC found that the complainant's OHIP number and photograph were his "personal information", as defined in section 2(1) of the *Act*. Both the OHIP number and photograph were collected in accordance with section 38(2) of the *Act*, since their collection was necessary to the proper administration of a lawfully authorized activity (i.e. tracing individuals, assisting in enforcing warrants, and serving documents personally). The OHIP number had been used in accordance with section 41(b) of the *Act*, for the purpose for which it was obtained, and not to obtain access to medical information.

The IPC found that the address used to serve the Notice of Intention to Garnishee was the address of a central garnishment registry of the federal Department of Justice. Therefore, the address was not the complainant's "personal information", as defined in section 2(1) of the *Act*, and section 40(2) of the *Act* did not apply. Since the complainant was an employee of Revenue Canada, which is not an institution under the *Act*, the privacy provisions of the *Act* did not apply to any disclosures within the complainant's workplace.

## SECTIONS CONSIDERED

2(1), 38(2), 40(2), 41(b)

## STATUTES CONSIDERED

*Garnishment Attachment and Pension Diversion Act*, s.7

## INVESTIGATION I92-39P

Institution: Ministry of Consumer and Commercial Relations

MARCH 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

## KEYWORDS

collection • manner of collection • use  
• accuracy • security • access

The complainant, a real estate salesperson, completed a form when he applied to the Ministry for the registration of a change of employer. This form asked for information which included, among other things, the complainant's name, present address, telephone number and his real estate registration number. Before submitting the form to the Ministry, the complainant was required to have his new employer sign the form. The complainant questioned whether his personal information had been collected and retained by the Ministry in accordance with the *Act*.

## CONCLUSION

The IPC determined that the Ministry's collection of the complainant's personal information was expressly authorized by the *Real Estate and Business Brokers Act* (the *REBBA*). Therefore, the Ministry's collection was in accordance with section 38(2) of the *Act*.

The IPC also determined that the complainant's employer did not provide any additional information about the complainant. If he had, then the Ministry's collection of this information from the employer would have been authorized under Regulation 986 of the *REBBA* and would have been in accordance with section 39(1) of the *Act*.

The IPC determined that the Ministry collected the complainant's personal information in order to update information already in its custody and control. The IPC concluded that, therefore, the Ministry used the complainant's personal information for the purpose for which it had been collected. The Ministry was, thus, in compliance with section 41(b) of the *Act*.

The IPC found that the completed forms were stored in a secure data control location at the Ministry. The forms were

microfilmed and after 60 days the original forms were shredded. Only authorized staff had access to the microfilms. The IPC concluded that the Ministry was in compliance with section 4 of Regulation 516/90 under the *Act*.

## SECTIONS CONSIDERED

2(1), 38(2), 39(1), 40(2), 41(b)

## STATUTES CONSIDERED

*Real Estate and Business Brokers Act*

## INVESTIGATION I92-49P

Institution: Ministry of Transportation

FEBRUARY 23, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

## KEYWORDS

disclosure

The complainant stated that she had received mail from the War Amputations of Canada, at her residence address. The complainant asked the IPC to ensure that the Ministry would never again release her residence address to the War Amps.

It is the practice of the Ministry to disclose the names and addresses of individuals from its Drivers' Licences database to the War Amps of Canada, for the charitable purposes of the War Amps' key tag program.

## CONCLUSION

The Ministry agreed in writing, not to include the complainant's name on future transmissions of information to the War Amps. The War Amps also confirmed in writing, that it had deleted the complainant's name from its files. Copies of both of these letters were sent to the complainant and the Ministry.

## SECTIONS CONSIDERED

2(1), 42



## INVESTIGATION I92-52P

Institution: Health Board Secretariat

FEBRUARY 26, 1992

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclose • letters

An individual complained that the Board had improperly disclosed his personal information when it had disclosed certain letters to a law firm.

### CONCLUSION

The IPC determined that the Board had sent the letters in error. It was our view that the Board had contravened section 42 of the *Act*.

### RECOMMENDATION

The IPC recommended that the Board take greater care to ensure that an individual's privacy was protected during mailings of large volumes of letters.

### SECTIONS CONSIDERED

2(1), 42

## INVESTIGATION I92-53P

Institution: Workers' Compensation Board

FEBRUARY 23, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclosure

The complainant objected to a decision that the WCB had made concerning his original claim file, and subsequently requested a copy of both his original and new claim files.

The complainant believed that when the WCB had sent him a copy of his claim files, it had also sent a copy of the same information to his employer, although he had not consented to this disclosure.

### CONCLUSION

The IPC concluded that the complainant's claim files contained the complainant's personal information, as defined in section 2(1) of the *Act*.

The IPC found no evidence that the WCB had disclosed a copy of the complainant's claim files to the complainant's employer, at the same time it had released a copy to the complainant.

The IPC did, however, find evidence of the WCB having disclosed the complainant's personal information to the complainant's employer, for the purpose of processing and monitoring the status of the complainant's claim. The IPC concluded that this type of disclosure is permitted under section 42(c) of the *Act*, because it constitutes a consistent purpose and one which could reasonably be expected under the circumstances.

### SECTIONS CONSIDERED

2(1), 42

## INVESTIGATIONS I92-56P AND I92-61P

Institutions: The Ministry of the Attorney General and the Ministry of Community and Social Services

FEBRUARY 17, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collect

An association of legal aid clinics complained that the Ministry of the Attorney General (MAG) had requested legal aid clinics to provide the *Family Benefits Act* (FBA) and *General Welfare Assistance Act* (GWA) client numbers for services provided by the clinics in 1989-90. This information was to be given to the Ministry of Community and Social Services (MCSS) so that it could make a cost-sharing claim under the federal Canada

Assistance Plan (CAP), on behalf of the MAG. The members of the association were of the view that the proposed collections of personal information by the MAG and the MCSS were improper.

### CONCLUSION

I92-61P: Complaint concerning the MAG:

The IPC determined that the Ontario Legal Aid Office, and not the MAG, had collected the client FBA/GWA numbers and would be forwarding them to the MCSS. (The MAG would not have access to this information.) Since, however, the Ontario Legal Aid Office was not an institution under the *Act*, it did not fall within the Commissioner's jurisdiction.

However, the IPC noted that the Ontario Legal Aid Office had collected the information at the request of the MAG. The IPC was of the view, therefore, that the MAG should have provided advice or direction so that Ontario Legal Aid, while not an institution under the *Act*, could have complied with the provisions of the *Act*, or at least within the "spirit" of the *Act*.

In reply to this observation, the MAG stated that while it was not obliged to do so, it would in the future, offer any necessary advice/direction in a similar situation so that an agency not falling under the *Act* could, nevertheless, act within the spirit of the *Act*.

I92-56P: Complaint against the MCSS:

The IPC determined that the MCSS's activity of administering cost sharing claims under CAP on behalf of other provincial ministries, was a lawfully authorized activity. The IPC also determined that in this case, the MCSS needed to provide proof that the services performed by the Legal Aid clinics had been

to "persons in need". Federal authorities had agreed to accept, as proof of "persons in need", proof of eligibility under FBA/GWA. Verifying the collected FBA/GWA client numbers provided this proof.

The IPC, therefore, concluded that the MCSS's proposed collection was necessary for the proper administration of a lawfully authorized activity, and was thus, in accordance with section 38(2) of the *Act*.

The MCSS's proposed collection involved the indirect collection of personal information. Under section 39(1) of the *Act*, personal information may only be collected directly from the individual to whom the information relates, except in the circumstances outlined in this section. The IPC examined section 39(1) and concluded that since none of the circumstances were applicable in this case, the MCSS's proposed collection was not in accordance with this section of the *Act*.

In addition, since the MCSS had not given notice, nor did it appear to intend to give notice as required under section 39(2), its proposed collection was not in accordance with this section of the *Act*.

#### RECOMMENDATION

The IPC recommended to the MCSS that it:

1. provide the IPC with written assurances that it would take all precautions to ensure the security and confidentiality of the personal information while in its custody and control; that it would eventually return this information to the Legal Aid Office; that it would not use the personal information for any purpose other than for verifying eligibility; and that it would not record or retain the fact that the FBA/GWA recipients had also been in receipt of Legal Aid;

2. should request a waiver of notice from the responsible minister, if it did not intend to give notice of its indirect collection; and

3. should take steps to ensure that in future, it would collect personal information in accordance with the provisions of the *Act*.

The MCSS's reply indicated that it had either complied with or would be complying with the IPC's recommendations.

#### SECTIONS CONSIDERED

2(1), 38, 39

### INVESTIGATION I92-71P

Institution: Workers' Compensation Board

APRIL 27, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • WCB

An individual had filed an appeal of a Workers' Compensation Board (WCB) decision to the Workers' Compensation Appeals Tribunal (WCAT). She found that after her appeal had been filed, the WCB had sent reports about her from a psychiatric institute to the WCAT. The complainant believed that her privacy had been breached by the disclosure for the following reasons:

1. the records were not relevant to the appeal, because the WCB had not allowed them to be entered as evidence in the original WCB hearing;

2. the WCB had not severed highly sensitive information about her in the records before disclosing them to the WCAT.

#### CONCLUSION

The IPC's view was that once the WCB received the Notice of Appeal, it had a

statutory obligation under section 89(3) of the *Workers' Compensation Act* (the *WCA*) to transmit the records relating to the appeal to the WCAT. The disclosure, therefore, had been made in accordance with section 42(e) of the *Act*, for the purpose of complying with an act of the Legislature.

The IPC determined that the WCB's practice was to send its complete file to the WCAT. The IPC was unable to find a statutory requirement under the *WCA* to support the complainant's position that the records in question should have been severed by the WCB before being disclosed to the WCAT.

#### SECTIONS CONSIDERED

2(1), 42(e)

#### STATUTES CONSIDERED

*Workers' Compensation Act*

### INVESTIGATION I93-005P

Institution: Ministry of Transportation

FEBRUARY 9, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

use

The complainant wrote that the Ministry and the Office of Francophone Affairs (the Office) had exchanged his personal information. He provided the IPC with a letter from the Office which detailed the personal information it had received from the Ministry.

The Ministry advised the IPC that the complainant had filed a complaint that the Ministry had not provided service in French. As a result, it was necessary for the Ministry to use some of the complainant's personal information to respond to the complaint.

#### CONCLUSION

The IPC concluded that any use of the complainant's personal information by



the Ministry, as outlined in his complaint, complied with section 41(b) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 41(b)

#### STATUTES CONSIDERED

*French Language Services Act*

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### INVESTIGATION I93-006P

Institution: Office of Francophone Affairs

MARCH 15, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose

The complainant wrote that the Office of Francophone Affairs (the Office) and a Ministry had exchanged his personal information. He provided a letter from the Office to him, which detailed the personal information the Office had received from the Ministry.

The Office advised the IPC that the complainant had filed a complaint with the Office that the Ministry had not provided service in French. As a result, it was necessary for the Office to contact the Ministry and to provide sufficient details of the complaint so that the Ministry could reply.

The Office advised the IPC that they had not disclosed the complainant's name to the Ministry. However, because of the nature of the complaint, the Ministry knew who the complainant was.

#### CONCLUSION

The IPC concluded that any personal information that the Office might have disclosed was for a consistent purpose, pursuant to the provisions of section 42(c) of the *Act*. The Office had collected the complainant's personal information directly from him when he filed a complaint under the *French Language Services*

*Act* against the Ministry. In order for the Office to process his complaint, the Office had to contact the Ministry and disclose certain details of the complaint. The complainant could have expected such a disclosure to the Ministry, as it was necessary to process his complaint against the Ministry.

#### SECTIONS CONSIDERED

2(1), 42(c)

#### STATUTES CONSIDERED

*French Language Services Act*

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### INVESTIGATION I93-008P

Institution: Ministry of Housing

APRIL 14, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose

The complainant wrote that the Ministry's French Language Services Co-ordinator (FLS Co-ordinator) had access to his appeal file during an appeal hearing before the Metro Toronto Housing Authority (the MTHA), an agency of the Ministry.

The Ministry advised the IPC that the complainant had insisted that the hearing be conducted in French. However, there were no MTHA board members who were sufficiently bilingual to conduct the hearing. As a result, the board asked the Ministry to provide a suitable bilingual person to chair the hearing.

The Ministry determined that the FLS Co-ordinator was the most suitable candidate. To brief the Chair for this hearing, certain records had to be made available. Because of the nature of the hearing, some of it was personal information. However it was deemed necessary to disclose this personal information to the FLS Co-ordinator so that he could perform his duties as the Chair. The FLS

Co-ordinator would be incapable of carrying out his duties as Chair without the information in question.

#### CONCLUSION

The IPC concluded that any use of the complainant's personal information by the Ministry, as outlined in his complaint, complied with section 41(b) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(c)

#### STATUTES CONSIDERED

*French Language Services Act*

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### INVESTIGATION I93-026P

Institution: Liquor Control Board of Ontario

MAY 7, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • notice • use • disclose • retain

An employee of the Board complained about the Board's installation of a closed circuit television system (CCTV). He believed that it was unnecessary to place cameras in the general office areas. He was also concerned that employees had not been clearly informed as to how the video tape recordings would be used or who would be viewing them.

#### CONCLUSION

The Board's position was that the CCTV monitoring was purely for security reasons and not for the purpose of employee surveillance.

The IPC determined that the Board's activity of protecting its personnel and assets was a lawfully authorized activity pursuant to section 3(c) and 3(n) of the *Liquor Control Act*. However, it was the IPC's view that the Board's collection of personal information through video cameras located in the corridors of the third and fourth floors during office hours was

not necessary to the proper administration of this activity and, therefore, was not in accordance with section 38(2) of the *Act*.

The IPC determined that the Board's collection was not in accordance with the notice provisions of section 39(2) of the *Act*. The Board acknowledged that it had not provided notice as required but proposed to post a notice at the main and side entrances to its main building.

The IPC found that the Board was in compliance with the retention requirements of section 40(1) of the *Act* except when it "used" a video tape recording. The IPC's view was that "use" included such activities as viewing and reviewing and not simply collecting and storing tapes until such time as they were re-recorded.

The IPC also found that on one occasion, the Board had disclosed a video tape recording to an employee's supervisor who did not have the authority to view the tape. This disclosure was contrary to section 42 of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Board should:

1. De-activate the cameras located in the corridors of the third and fourth floors during working hours, and activate them only after regular office hours.
2. Implement its proposal to post the required notice of collection at the main and side entrances to the main building.
3. Comply with the retention requirements of the *Act*, when it "use" video tape recordings and to consider developing procedures for identifying which video tapes would be used and which would not.

4. Implement its proposal to develop written policies and procedures regarding security and control, and access to video equipment and video tape recordings.

#### SECTIONS CONSIDERED

2(1), 38(2), 39(2), 40(1), 42

#### STATUTES CONSIDERED

*Liquor Control Act*

### INVESTIGATION I92-11M

Institution: A Separate School Board

MARCH 24, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • publicinfo • employee • deceased

The complainants were family members of an individual who had been employed by the School Board. He had been charged with sexual interference with respect to two pupils at the school where he had worked. Shortly after being charged, the individual had taken his own life. It was the complainants' view that the School Board had improperly disclosed 1) the charges against the individual to the school staff; 2) the suicide of the individual to the school staff; 3) the charges against the individual to parents of children attending the school.

#### CONCLUSION

1. Section 27 of the *Act* states that Part II of the *Act* does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. It was the IPC's view that once the individual had been charged and "an information" had been laid and filed in court, the information concerning the charges against him was personal information to which section 27 was applicable. However, the IPC was unable to determine exactly when the charges had been laid, and when an information had been laid

and filed in court. The IPC was, therefore, unable to determine if section 27 was applicable to the disclosure by the School Board of the charges against the individual to the school staff. Thus, the IPC was unable to determine if the disclosure was in accordance with the *Act*. Nevertheless, the IPC was of the view that the School Board should have considered waiting until it knew for certain that charges against the individual had been laid (i.e. after the information had been filed in the provincial court), before informing its staff.

2. The School Board stated that the disclosure of the individual's suicide was made in the discharge of its duties to staff and students and, therefore, had complied with section 32(h) of the *Act*. However it was the IPC's view that the disclosure by the School Board was not made to an employee or officer of the Board who needed the specific information about the individual's suicide in the performance of his or her duties, consequently the disclosure was not considered to be necessary and proper to the discharge of the School Board's functions. The IPC determined that the disclosure of the individual's suicide was not in accordance with the *Act*.

3. The IPC found no evidence that the School Board had disclosed information about the charges against the individual to the parents of children attending the school.

#### RECOMMENDATION

The IPC recommended that:

1. Prior to disclosing the existence of criminal charges against an employee, the School Board should confirm that the information was contained in a record available to the general public, i.e. in an information filed in court.



2. The School Board should examine its procedures guide on dealing with suicide and tragic events to ensure that it did not contravene the provisions of the *Act* and to make any necessary amendments.

3. The School Board should take steps to ensure that its staff were made aware of the requirements of the *Act* so that in future, all disclosures of personal information were made in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 27, 32

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### INVESTIGATION I92-12M

Institution: A Regional Police Services Board

MARCH 24, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • deceased

The complainants were family members of an individual who had been employed by a school board. The individual had been arrested and charged with sexual interference with respect to two pupils at the school where he had worked. Shortly after he had been charged, the individual had taken his own life. According to the complainants, the Police had improperly disclosed information as follows: 1) although assurances had been given to the individual's family, the Police disclosed his suicide to the school board; 2) a police officer, who was not involved in the investigation of the charges or the suicide, told his wife of the suicide; 3) the Police also provided details of the suicide to a local newspaper.

#### CONCLUSION

1. The Police advised that in order to meet certain objectives it was necessary to disclose the suicide of the individual to the school board. In addition, the Police

was of the view that the disclosure was consistent with the *Coroner's Act* and the *Police Services Act*, and, therefore, it was in accordance with section 32(c) of the *Act*.

It was the IPC's view that the Police did not need to disclose that the individual had committed suicide,— only that he had died, in order to meet its objectives. The IPC also examined the legislation relied upon by the Police for its disclosure. However, the IPC did not find that the disclosure was in accordance with section 32(c) since it was not for a purpose for which the information had been collected or for a consistent purpose. The IPC concluded that the disclosure of the individual's suicide to the school board was not in accordance with the *Act*.

2. The Police advised that the disclosure by the police officer to his wife had been made in compassionate circumstances. The officer knew that his wife, who was related to the individual's wife, would want to contact the family to offer her sympathy and support.

Section 32(i) of the *Act* permits disclosure in compassionate circumstances to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased. It was the IPC's view that under this section of the *Act*, the disclosure must be made both in compassionate circumstances and to assist in locating the next of kin or friend of the individual involved. The IPC found that in this case, although the disclosure was made in compassionate circumstances, it was not made to facilitate contact with the individual's next of kin, since family members were already at his home when the police officer's wife telephoned.

The IPC found that the disclosure by the police officer to his wife was not in accordance with the *Act*.

3. The IPC found no evidence that the Police had disclosed information about the individual's suicide to the newspaper, contrary to the *Act*.

#### RECOMMENDATIONS

The IPC recommended that:

1. When the Police are requested by victims of tragedy to maintain confidentiality about a tragic event, their wishes should be respected to the greatest extent possible.

2. Where such a request is made in the context of a suicide, the Police should disclose only that the individual has died. It was the IPC's view that only in an unusual case, would it be appropriate to disclose a suicide to persons other than to the individual's immediate family.

3. The Police should take steps to ensure that its staff are made fully aware of the requirements of the *Act*, so that in future, all disclosures are made in accordance with the *Act*.

In reply to our third recommendation, the Police advised of a number of measures it had already undertaken.

#### SECTIONS CONSIDERED

2(1), 32

#### STATUTES CONSIDERED

*Coroner's Act, Police Services Act*

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### INVESTIGATION I92-34M

Institution: A Municipality

FEBRUARY 4, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collection

The Treasury department of the Municipality administers long term disability claims for their employees. Employees claiming benefits were routinely asked

to submit forms containing their medical information to the Municipality. The forms were then forwarded to the insuring agencies for processing of claims.

The complainant, an employee of the Municipality, objected to Treasury staff having access to her confidential medical information. The insuring companies had advised that she could send the forms directly to them.

#### CONCLUSION

The IPC reviewed the forms, and concluded that collection of the medical information by the Municipality was not "necessary" to the proper administration of a lawfully authorized activity, namely the administration of benefits.

#### RECOMMENDATIONS

The IPC recommended that:

1. The Municipality should cease collection of any medical information on the forms, within six months of receiving the report.
2. Any revised forms should neither request medical information nor request the employee's authorization to release medical information to the Municipality.
3. The Municipality should notify employees in writing that the Municipality will no longer collect the forms in their present format, and that when new forms are made available, the portion relating to the collection of medical information may be sent directly to the appropriate insurance carrier.

The Municipality responded positively by agreeing to adopt all of the recommendations.

#### SECTIONS CONSIDERED

2(1), 28(2)

## INVESTIGATION I92-55M

Institution: A Municipal Board of Education

MARCH 30, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

dismiss • camera • surveillance  
• lawactivity • grievance • video

An employee complained that a Municipal Board of Education used the services of professional investigators to videotape his activities during working hours. This information was used to terminate the complainant's employment with the Board and was subsequently used and disclosed by the Board at a grievance hearing into the complainant's dismissal.

#### CONCLUSION

The IPC concluded that a videotape recording of an individual was recorded personal information about the individual, as defined under section 2(1) of the *Act*. The IPC was also of the view that the investigator's reports were personal information.

The IPC also concluded that the video surveillance was justified and necessary because the Board had reasonable grounds to believe that the complainant was engaging in some other form of activity, during his working hours. Therefore, the Board used video surveillance to collect the necessary evidence of the complainant's unauthorized activities. The Board required this evidence in order to take disciplinary or other action against the employee, and to justify its actions in any subsequent grievance proceedings. It was the IPC's view that the collection of personal information was necessary in order for the Board to properly exercise one of its lawfully authorized management functions, that of discharging one of its employees for just cause.

The IPC determined that the complainant had not been notified of the collection of personal information until after the collection had taken place. Therefore, the Board did not comply with the notice provisions of the *Act* at the time of the collection.

The IPC concluded that the Board had collected the personal information to determine if it could exercise its right under the collective agreement, to discharge the employee for just cause. The Board subsequently used this information to terminate the complainant's employment and used it at the ensuing grievance filed by the employee. Therefore, it was the IPC's view that the Board used the information for the purpose for which it was collected.

The IPC also concluded that it was not unreasonable for the complainant to expect that the Board would disclose the personal information it had collected, at the grievance hearing. Therefore, the Board disclosed the complainant's personal information, in compliance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 28, 29, 31, 32, Reg. 824(4)

#### STATUTES CONSIDERED

*Education Act, Labour Relations Act*

## INVESTIGATION I92-59M

Institution: A Municipal Licensing

Commission

MARCH 1, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collection

The complainant was concerned about the collection of income tax returns from taxi cab drivers on a waiting list for taxi plates. The returns contained a broad range of personal information, including



social insurance number, date of birth, financial records, medical records, marital status, receipts for political party donations, and spousal information where joint returns are filed.

The Licensing Commission contended that according to their bylaw, collection was necessary in order to verify that taxi drivers' income was derived mainly from driving a taxicab. The need to collect income tax returns, however, for this purpose was questionable.

#### CONCLUSION

The IPC found that collection of income tax returns was not necessary to the proper administration of the licensing of taxicab drivers, and that a form currently in use by the Licensing Commission (Declaration of Affirmation) could serve to provide the necessary income information.

#### RECOMMENDATIONS

The IPC recommended that:

1. Upon receipt of this report, the Licensing Commission should cease collection of taxi drivers' income tax returns, with the exception of the limited collection noted below in Recommendation 3.
2. Upon receipt of this report, the Licensing Commission should return to the complainant, all of his income tax returns.
3. The Licensing Commission may wish to conduct an audit of no more than 10% of all taxi drivers' Declarations of Affirmation filed, for the purpose of verifying that the primary income of the drivers is derived from driving a taxicab. For this purpose alone, the first page of a driver's income tax return and the Statement of Income and Expenditure for the Year, if filed, may be collected. Drivers included in such an audit must be advised that they may sever all the information from page 1 of the return, with the exception of the

following: name, address, date of birth, employer, and those lines related to sources of income. On the 1992 Income Tax Return, the relevant lines applicable to sources of income were lines 101-104, and 135-139.

4. If the Licensing Commission decides to conduct an audit as described above, then notice of Recommendation 3 and the permitted severances to the first page of the income tax return should be provided to all taxicab drivers.

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#### INVESTIGATION I92-64M

Institution: A Municipal Township

MARCH 22, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

public record • disclosure

An individual filed a letter with the Township to appeal an amendment to a zoning by-law passed by the Township's Council. Section 34(23) of the *Planning Act* requires the Township to forward that appeal to the Ontario Municipal Board (OMB). The Township disclosed the individual's letter at a Council meeting, before forwarding the letter to the OMB. The information in the letter then appeared in a local newspaper article. The individual complained that the letter was disclosed by the Township, contrary to the *Act*.

#### CONCLUSION

The IPC determined that the letter contained the individual's personal information. The IPC found that the individual was aware of the public nature of the processes in the *Planning Act*. The IPC found that the OMB files are available to the general public, where an order has not been made to keep any document in the files confidential.

The IPC concluded that due to the public nature of the planning process and the

requirement in section 34(23) of the *Planning Act* to forward a notice of appeal to the public OMB file, a letter of appeal is information maintained by the Township for the purpose of creating a record which is available to the general public. Accordingly, the individual's letter of appeal was information maintained for the purpose of creating a record that was available to the general public, and section 27 of the *Act* applied. Since section 27 of the *Act* applied to the personal information, the privacy provisions in the *Act* did not apply.

#### SECTIONS CONSIDERED

2(1), 27

#### STATUTES CONSIDERED

*Planning Act, Ontario Municipal Board Act*

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#### INVESTIGATION I92-65M

Institution: A Police Force

OCTOBER 23, 1992

(ACTING ASSISTANT COMMISSIONER HUBERT)

#### KEYWORDS

personinfo • retention

A former employee of the Police Force found out that the Force still had his fingerprints and photograph on file, more than one year after he had left. He asked the IPC if this contravened the *Act*.

The complainant also complained to the Force, asking them to delete his personal records from all data bases and record storage.

#### CONCLUSION

Prior to our investigation, the complainant received a satisfactory response from the Police Force concerning the data bases and record storage. His one remaining concern was whether the retention of his fingerprints and photograph on microfilm complied with the *Act*.

The IPC reviewed the Police Force's retention schedules, and determined that retention of the records on microfilm complied with Ontario Regulation 517/90 of the *Act*. The Regulation specifies only a minimum retention period, not a maximum period.

#### SECTIONS CONSIDERED

2(1), Ontario Regulation 517/90

### INVESTIGATION I92-71M

Institution: A Municipal Town

APRIL 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose

The complainant had written to the Town complaining about noise levels from a local newspaper recycling plant. The complainant stated that subsequently the Town had: a) disclosed his unlisted telephone number to the General Manager of the recycling plant without his consent, and b) disclosed his personal information to a local newspaper, in contravention of the *Act*.

#### CONCLUSION

The IPC found no conclusive evidence that the above-noted disclosure had occurred. The IPC did, however, advise the Town not to rely on individuals requesting that their personal information not be disclosed. Institutions bear the responsibility of protecting personal information and ensuring compliance with the privacy provisions of the *Act*.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-72M

Institution: A Municipality

MAY 11, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • consistent • disclose • necessary  
• noticecollect • SIN • use

An individual applied for a job as a firefighter with the Municipality. As part of the recruitment process, the individual wrote a test, which asked for the applicant's sex, ethnicity, highest grade completed and social insurance number (SIN). The Municipality's Fire Chief informed the applicants that providing their sex and ethnicity was optional and that this information would be kept confidential and used for statistical purposes only. The individual indicated that he was a white male.

The Municipality sent the completed test answer sheets to a private company for marking. The individual scored 83 percent. The cut-off mark for white males, however, was 85 percent. The cut-off mark for females and visible minorities was 70 percent.

The individual questioned the Municipality's authority to collect and use his sex and ethnicity. He also questioned the Municipality's authority to disclose his sex, ethnicity, grade information and SIN to the private company.

#### CONCLUSIONS

The IPC determined that the Municipality had initially collected the complainant's sex and ethnicity information on an employment application form, and subsequently on the test answer sheet. The IPC found that the Municipality had the authority to collect this information on the employment application form because the collection was "necessary" for the proper administration of a lawfully authorized activity, namely, a special program under section 14(1) of the *Ontario Human Rights Code*. However, any subsequent collection of this information for the purpose of ad-

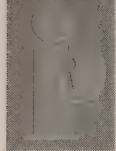
ministering the special program would no longer be "necessary" and, therefore, would not meet the provisions of section 28(2) of the *Act*.

The IPC determined that the Municipality had not satisfied all of the requirements of section 29(2) of the *Act*, regarding notice of collection.

The IPC concluded that the Municipality's use of the complainant's sex and ethnicity information was not in compliance with section 31 of the *Act*. The IPC found that stating that certain data would be used for statistical purposes was something quite different from stating that the data would be used statistically to determine the number of white male applicants versus the number of applicants in the employment equity target groups that would proceed beyond the test, in the recruitment process. The IPC found that the Municipality's use of the information was not in compliance with section 31(a) of the *Act*, because the complainant could not have consented to a use of the information which was different from the stated use. The IPC also found that the Municipality's use of the information was not in compliance with section 31(b) of the *Act*, because its use of the information was for a purpose other than the stated purpose or a consistent purpose. The IPC also found that section 31(c) was not applicable in the circumstances of this complaint.

The IPC found that the Municipality's disclosure of the applicants' sex and ethnicity information to the private company for tabulation was for the purpose for which it had been obtained or compiled — that being, statistical purposes. Therefore, the disclosure of this information was in accordance with section 32(c) of the *Act*. However, the IPC found that the Municipality did not need to disclose the SIN and grade information





of the applicants to generate the statistics necessary for its employment equity program. Thus, the Municipality's disclosure of this personal information was not in compliance with section 32 of the *Act*.

#### RECOMMENDATION(S)

The IPC recommended that the Municipality:

1. collect personal information only in instances where the collection was truly "necessary" for the proper administration of a lawfully authorized activity;
2. provide proper notices of collection, in accordance with section 29(2) of the *Act*;
3. use personal information only in accordance with section 31 of the *Act*;
4. establish a formal written agreement with the private company requiring it to comply with the applicable privacy provisions of the *Act*, since the private company was in physical possession of the test answer sheets containing the applicants' personal information;
5. as an alternative to recommendation #4, consider removing the personal identifiers from the test answer sheets before disclosing them to the private company; and
6. not disclose any personal information, except in accordance with section 32 of the *Act*.

#### SECTIONS CONSIDERED

2(1), 28(2), 29(2), 31, 32

#### STATUTES CONSIDERED

*Ontario Human Rights Code*

### INVESTIGATION I92-73M

Institution: A Police Force

FEBRUARY 26, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclosure

The complainant filed an access request for certain records involving the police and herself. In the acknowledgement letter, the Co-ordinator informed her that her name might "be subject to release to any person" who was affected by her request. She complained that this "unwarranted disclosure" to persons outside the FOI and Privacy Unit was a violation of her privacy and contrary to the *Act*.

The Co-ordinator informed the IPC that the complainant's access request had been disclosed to "only those persons who were involved with this incident (and their immediate supervisors who are responsible to produce the records)" in order to respond to the access request.

#### CONCLUSION

The IPC concluded that it was not necessary for the Co-ordinator to disclose the complainant's actual access request to the police staff involved, and their immediate supervisors.

#### RECOMMENDATION

As a result of this investigation, the Co-ordinator implemented two changes in the manner in which access requests are processed: 1) In the letter acknowledging receipt of an access request, the Co-ordinator no longer states that the request may be subject to release to persons affected by the request. 2) The Co-ordinator no longer distributes a copy of the access request. The co-ordinator simply advises the Superintendents that an access request has been received and that certain records are required.

Since these changes had been implemented, the IPC did not find it necessary to make any recommendations.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I92-82M

Institution: A Municipality

APRIL 22, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect

The complainant was the director of a child daycare centre that provided daycare under a purchase of service contract with the Municipality. To renew his contract, the complainant was required to submit the Revenue Canada taxation slips (T-4 slips) of his employees as part of his budget package. The complainant believed that the collection of the T-4 slips breached the privacy of his employees, because the Municipality did not have the legal authority to collect this information.

#### CONCLUSION

The IPC was advised by the Municipality that the submission of T-4 slips was an optional method for daycare providers who did not submit an audited statement of staff salaries to verify their employees' wages.

The IPC found that the Municipality's collection of the T-4 slips was neither expressly authorized by statute, used for the purposes of law enforcement, nor was it necessary for the proper administration of a lawfully authorized activity. Therefore, the collection was not in accordance with section 28(2) of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Municipality discontinue collecting employee

T-4 slips as part of the budget submission process, and the Municipality agreed to this.

However, the Municipality was concerned that requiring an audited statement of staff salaries would increase daycare centres' costs. The Municipality proposed that it verify T-4 slips and pay stubs when it conducted its annual license renewal inspection, stating that under the purchase of service agreement, it had the right to examine the records of daycare centres. The IPC recognized that the Municipality had an obligation to ensure that public funds were being spent properly and advised that any verification of T-4 slips or pay stubs should be carried out in a manner which protected the privacy of daycare employees.

#### SECTIONS CONSIDERED

2(1), 28(2)

#### STATUTES CONSIDERED

*Day Nurseries Act*

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### INVESTIGATION I92-87M

Institution: A School Board

MARCH 2, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclosure

The complainant, a former Board employee, had previously filed a complaint with the IPC concerning, in part, the Board's collection of information to support his dismissal. Following the investigation of this complaint, the IPC had forwarded a copy of the draft investigative report of its findings to both the complainant and to the Board for comments. However, the Board's legal counsel had forwarded a copy of the draft report with a covering letter to a Worker Advisor at the Ministry of Labour and to a Re-employment Hearings Officer at the Workers' Compensation Board

(WCB). The complainant was of the view that the Board had improperly disclosed his personal information to these two individuals.

#### CONCLUSION

The IPC determined that the draft report together with the covering letter, which identified the complainant by name, was personal information.

The IPC determined that the draft report was sent to the Worker Advisor and to the Re-employment Hearings Officer in response to a letter from the Worker Advisor. This letter had advised that the Worker Advisor intended to object on behalf of his client (the complainant) to the Board's proposed introduction, at the complainant's WCB Re-employment Hearing, of evidence that the Board had collected to support his dismissal. The Worker Advisor was of the view that the Board's gathering of this information had contravened the complainant's rights under the municipal *Act*.

The IPC determined that one of the purposes for the Board's collection of the draft report (together with the complainant's name) had been to resolve the very issue of whether the Board's gathering of personal information to establish just cause for the complainant's dismissal had been contrary to the *Act*. (The IPC's draft report found that the collection had taken place prior to the *Act* being in force and, since there could not have been a contravention of the *Act*.)

The IPC determined that the Board's subsequent disclosure of the draft report to both the Worker Advisor and to the Re-employment Hearings Officer was to help resolve the issue which the Worker Advisor intended to raise before the WCB of whether the Board's original collection had been contrary to the *Act*.

Thus, the IPC concluded that the disclosure of the draft report (together with the complainant's name) was for a purpose for which it had been collected and consequently was in accordance with section 32(c) of the *Act*.

The IPC, however, commented that the Board should have made it clear to the Worker Advisor and to the Re-employment Hearings Officer that the investigative report was a draft only, which could be altered or amended as a result of representations from the Board or the complainant.

#### SECTIONS CONSIDERED

2(1), 32

#### STATUTES CONSIDERED

*Workers' Compensation Act*

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### INVESTIGATION I92-88M

Institution: A Municipal City

FEBRUARY 9, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • dispose

The City's Social Services Department had collected information about an individual through a telephone inquiry. The individual claimed that she personally, had not provided the information at issue and requested that the City destroy all of the personal information it had collected.

#### CONCLUSION

The City obtained the complainant's written consent and then destroyed hard copies of any records containing the complainant's personal information. The complainant was satisfied with the resolution of the complaint.

#### SECTIONS CONSIDERED

2(1), RRO 1990, Reg 823 sec 5





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## INVESTIGATION I93-013M

Institution: A Regional Police Services  
Board

MAY 10, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collect • SIN

The complainant, a taxi driver, was concerned that the Police were collecting social insurance numbers (SIN) from individuals renewing their taxi driver licences, in order to verify their identity.

### CONCLUSION

As a result of the IPC's contact, the Police proposed the following solution. The Police would:

1. modify their forms to exclude the collection of the SIN;
2. modify their procedures to "look but not record" the SIN if offered by an individual; not ask that the SIN be produced as part of the identification process;
3. ensure that the Police service was made aware of the rules governing the use and collection of the SIN, thus ensuring service-wide compliance concerning this piece of identification.

The IPC accepted the proposed solution.

### SECTIONS CONSIDERED

2(1), 28(2)

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	26	16	73
Municipal	13	21	94
Total	39	37	167

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	23	21	104
Municipal	19	19	98
Total	42	40	202

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1993 TO DATE		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	5	6
Retention	0	1
Use	0	2
Disclosure	17	9
Access	0	1
Correction	1	0

Numbers are subject to change

\* January 1 - March 31

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# Directory to

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*October 1993*





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Simply look up the order or investigation, either alphabetically by institution name, or numerically by order or investigation number. The issue of *Précis* will appear to the right. Both the alphabetical and numeric sections are divided into provincial and municipal categories.

*Highlights of IPC orders and compliance investigation reports in Précis are for convenience only. For accurate reference, refer to the full-text orders and reports available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8.*





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	P-364	Winter 1993
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Archives of Ontario	P-292	Summer 1992
	P-316	Fall 1992
	P-352	Fall 1992
	P-369	Fall 1992
Attorney General, Ministry of	P-262	Spring 1992
	P-298	Summer 1992
	P-308	Fall 1992
	P-341	Fall 1992
	P-344	Fall 1992
	P-354	Winter 1993
	P-368	Winter 1993
	P-381	Spring 1993
	P-382	Spring 1993
	P-392	Spring 1993
	P-407	Spring 1993
Attorney General, Ministry of (Office of the Public Trustee)	P-327	Fall 1992
Centennial College of Applied Arts and Technology	P-375	Winter 1993
Community and Social Services, Ministry of	P-281	Summer 1992
	P-299	Summer 1992
	P-300	Summer 1992
	P-303	Summer 1992
	P-325	Fall 1992
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## Orders — Provincial Organizations

<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
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	P-389	Spring 1993
	P-426	Summer 1993
Consumer and Commercial Relations, Ministry of	P-273	Spring 1992
	P-282	Summer 1992
	P-305	Summer 1992
	P-309	Fall 1992
	P-318	Fall 1992
	P-319	Fall 1992
	P-338	Fall 1992
	P-347	Winter 1993
	P-350	Winter 1993
	P-405	Spring 1993
	P-410	Spring 1993
	P-411	Summer 1993
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	P-289	Summer 1992
	P-297	Summer 1992
	P-321	Fall 1992
	P-326	Fall 1992
	P-339	Fall 1992
	P-349	Winter 1993
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	P-310	Fall 1992



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	P-320	Fall 1992
	P-345	Fall 1992
	P-361	Winter 1993
	P-366	Winter 1993
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	P-302	Summer 1992
	P-304	Summer 1992
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	P-323	Fall 1992
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	P-342	Fall 1992
George Brown College of Applied Arts and Technology	P-351	Winter 1993
Georgian College of Applied Arts and Technology	P-377	Winter 1993
Government Services, Ministry of	P-279	Spring 1992
	P-312	Fall 1992
	P-401	Spring 1993
Health, Ministry of	P-277	Spring 1992
	P-283	Summer 1992
	P-284	Summer 1992
	P-291	Summer 1992
	P-293	Summer 1992
	P-294	Summer 1992
	P-324	Fall 1992
	P-333	Fall 1992
	P-336	Fall 1992
	P-340	Fall 1992
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	P-356	Winter 1993
	P-374	Winter 1993



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	P-402	Spring 1993
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	P-423	Summer 1993
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Housing, Ministry of	P-295	Summer 1992
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	P-408	Spring 1993
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	P-370	Winter 1993
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Ontario Human Rights Commission	P-322	Fall 1992
	P-329	Fall 1992
	P-330	Fall 1992
	P-363	Winter 1993
	P-397	Spring 1993
	P-403	Spring 1993
Ontario Hydro	P-270	Spring 1992
	P-317	Fall 1992
	P-335	Fall 1992
	P-367	Winter 1993
Ontario Northland Transportation Commission	P-394	Spring 1993
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	P-272	Spring 1992



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<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
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	P-296	Summer 1992
	P-301	Summer 1992
	P-313	Fall 1992
	P-315	Fall 1992
	P-328	Fall 1992
	P-343	Fall 1992
	P-355	Winter 1993
	P-362	Winter 1993
	P-372	Winter 1993
Stadium Corporation of Ontario	P-263	Spring 1992
	P-288	Summer 1992
	P-346	Winter 1993
	P-386	Spring 1993
	P-406	Spring 1993
	P-409	Spring 1993
Teachers' Pension Plan	P-380	Spring 1993
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	P-287	Summer 1992
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Treasury and Economics, Ministry of	P-264	Spring 1992
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Workers' Compensation Board	P-373	Winter 1993

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<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
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Barrie, Corporation of the City of	M-117	Summer 1993
Belleville Board of Commissioners of Police	M-97	Summer 1993
Cambridge, City of	M-14	Summer 1992
Carleton Board of Education	M-27	Fall 1992
Collingwood Police Services Board	M-78	Spring 1993
Dufferin-Peel Roman Catholic Separate School Board	M-55	Winter 1993
Durham Regional Police	M-9	Summer 1992
Espanola Board of Education	M-47	Winter 1993
Etobicoke Board of Education	M-29	Fall 1992
Etobicoke, City of	M-70 M-81	Spring 1993 Spring 1993
Flos, Township of	M-66	Spring 1993
Gravenhurst, Town of	M-23 M-83	Fall 1992 Spring 1993
Halton Board of Education	M-8 M-65 M-80 M-113 M-115	Spring 1992 Winter 1993 Spring 1993 Summer 1993 Summer 1993
Hamilton Wentworth Regional Police	M-42	Winter 1993



## Orders — Municipal Organizations

<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
Hamilton Wentworth Regional Police	M-62	Winter 1993
Hamilton, Corporation of the City of	M-82	Spring 1993
Kirkland Lake Police Service	M-38	Winter 1993
Kitchener, City of	M-21 M-34	Fall 1992 Winter 1993
Lambton County Board of Education	M-18	Summer 1992
Lincoln County Board of Education	M-91	Summer 1993
London Board of Commissioners of Police	M-58	Winter 1993
London Police Force	M-85	Spring 1993
Maidstone, Corporation of the Township of	M-77	Spring 1993
Mara, Township of	M-40	Winter 1993
Markham, Corporation of the Town of	M-90	Summer 1993
Metropolitan Licensing Commission	M-17 M-39	Summer 1992 Winter 1993
Metropolitan Toronto and Regional Conservation Authority	M-67	Spring 1993
Metropolitan Toronto Police	M-28 M-41 M-48 M-49 M-68 M-75 M-84	Fall 1992 Winter 1993 Winter 1993 Winter 1993 Spring 1993 Spring 1993 Spring 1993



## Orders — Municipal Organizations

<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
Metropolitan Toronto, Municipality of	M-12 M-50	Summer 1992 Winter 1993
Midland Public Utilities Commission	M-32	Fall 1992
Mississauga, Corporation of the City of	M-46	Winter 1993
Niagara Regional Board of Commissioners of Police	M-73	Spring 1993
Nipissing Board of Education	M-71	Spring 1993
North Bay Hydro	M-37	Winter 1993
North York, City of	M-7 M-10 M-44	Spring 1992 Summer 1992 Winter 1993
Orillia, Corporation of the Township of	M-72	Spring 1993
Oshawa, Corporation of the City of	M-16 M-20 M-31 M-43	Summer 1992 Fall 1992 Fall 1992 Winter 1993
Osprey, Corporation of the Township of	M-35	Winter 1993
Ottawa Board of Commissioners of Police	M-54 M-63	Winter 1993 Winter 1993
Ottawa-Carleton Regional Transit Commission	M-13	Summer 1992
Penetanguishene, Town of	M-33	Fall 1992
Peterborough, City of	M-59 M-76	Winter 1993 Spring 1993



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<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
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Sioux Lookout, Corporation of the Town of	M-64	Winter 1993
Sudbury Regional Police	M-52	Winter 1993
Sudbury, City of	M-30	Fall 1992
Sudbury, Regional Municipality of	M-26	Fall 1992
Thunder Bay Police Services Board	M-74 M-79	Spring 1993 Spring 1993
Tiny, Municipality of the Township of	M-19	Fall 1992
Toronto Hydro	M-56	Winter 1993
Toronto, City of	M-24 M-25 M-36 M-51 M-57 M-94	Fall 1992 Fall 1992 Winter 1993 Winter 1993 Winter 1993 Summer 1993
Walkerton Board of Commissioners of Police	M-45	Winter 1993
Waterloo, City of	M-15	Summer 1992
Wellington County Board of Education	M-96	Summer 1993
Wentworth County Board of Education	M-11	Summer 1992
Westminster, Town of	M-61	Winter 1993

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<u>Organization</u>	<u>Order #</u>	<u>Issue</u>
Windsor Board of Commissioners of Police	M-53	Winter 1993
Windsor Board of Education	M-104	Summer 1993
Windsor Police Service	M-22	Fall 1992
York Regional Police	M-60	Winter 1993



## Compliance Investigations — Provincial Organizations

<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
Algonquin Forest Authority	I91-89P	Spring 1992
Attorney General, Ministry of	I92-38P	Summer 1993
	I92-61P	Summer 1993
Cabinet Office	I91-22P	Spring 1992
	I91-23P	Summer 1992
Community and Social Services, Ministry of	I91-57P	Summer 1992
	I91-69P	Spring 1993
	I91-81P	Summer 1992
	I92-06P	Winter 1993
	I92-42P	Winter 1993
	I92-56P	Summer 1993
	I92-61P	Summer 1993
Consumer and Commercial Relations, Ministry of	I91-94P	Fall 1992
	I92-39P	Summer 1993
Correctional Services, Ministry of	I91-02P	Spring 1992
	I91-24P	Fall 1992
	I91-38P	Summer 1992
	I91-39P	Summer 1992
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	I91-53P	Summer 1992
	I92-19P	Spring 1993
	I92-28P	Spring 1993
Government Services, Ministry of	I92-41P	Fall 1992
Health Board Secretariat	I92-52P	Summer 1993
Health Disciplines Board	I91-11P	Fall 1992
	I91-65P	Fall 1992

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<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
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	I91-60P	Spring 1992
	I91-61P	Fall 1992
	I91-67P	Fall 1992
	I91-71P	Fall 1992
	I92-18P	Summer 1993
	I92-29P	Spring 1993
	I92-35P	Fall 1992
Hospital	I92-27P	Fall 1992
Housing, Ministry of	I92-34P	Summer 1993
	I93-008P	Summer 1993
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	I92-45P	Spring 1993
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Natural Resources, Ministry of	I92-03P	Summer 1992
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Ontario Teacher's Pension Plan Board	I91-52P	Fall 1992

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<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
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Solicitor General and Correctional Services, Ministry of	I91-90P	Winter 1993
	I92-46P	Winter 1993
	I92-50P	Fall 1992
Transportation, Ministry of	I91-48P	Summer 1992
	I91-68P	Summer 1992
	I91-79P	Summer 1992
	I91-80P	Summer 1992
	I92-05P	Summer 1992
	I92-10P	Summer 1992
	I92-15P	Summer 1992
	I92-49P	Summer 1993
	I93-005P	Summer 1993
Workers' Compensation Board	I91-35P	Summer 1992
	I91-62P	Summer 1992
	I91-87P	Spring 1992
	I92-08P	Fall 1992
	I92-09P	Spring 1993
	I92-25P	Fall 1992
	I92-26P	Fall 1992
	I92-33P	Spring 1993
	I92-53P	Summer 1993
	I92-71P	Summer 1993



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<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
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District Welfare Administration Boards	I91-48M I92-01M	Spring 1992 Summer 1992
Hydro-Electric/Public Utilities Commissions	I91-45M I92-02M	Summer 1992 Winter 1993
Local Services Boards	I92-23M	Summer 1992
Municipal Corporations	I91-03M I91-07M I91-42M I91-43M I91-47M I91-49M I91-54M I91-55M I91-56M I91-57M I91-60M I91-62M I91-63M I91-66M I91-67M I92-03M I92-05M I92-06M I92-07M I92-09M I92-13M I92-21M I92-22M I92-26M I92-28M I92-29M	Summer 1992 Fall 1992 Summer 1992 Winter 1993 Summer 1992 Spring 1992 Spring 1992 Summer 1992 Summer 1992 Spring 1992 Summer 1992 Summer 1992 Spring 1992 Fall 1992 Fall 1992 Spring 1992 Summer 1992 Fall 1992 Spring 1993 Summer 1992 Winter 1993 Summer 1992 Fall 1992 Spring 1993 Spring 1993 Spring 1993

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<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
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	I92-36M	Fall 1992
	I92-40M	Fall 1992
	I92-54M	Winter 1993
	I92-56M	Spring 1993
	I92-64M	Summer 1993
	I92-71M	Summer 1993
	I92-72M	Summer 1993
	I92-82M	Summer 1993
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	I93-013M	Summer 1993
School Boards	I91-46M	Summer 1992
	I91-70M	Winter 1993
	I92-10M	Summer 1992
	I92-11M	Summer 1993
	I92-14M	Spring 1993
	I92-16M	Fall 1992
	I92-17M	Summer 1992
	I92-20M	Spring 1993
	I92-31M	Spring 1993
	I92-32M	Winter 1993
	I92-38M	Winter 1993
	I92-50M	Fall 1992
	I92-55M	Summer 1993

## Compliance Investigations — Municipal Organizations

<u>Organization</u>	<u>Investigation #</u>	<u>Issue</u>
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	I92-67M	Spring 1993
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Transit Commissions	I92-61M	Fall 1992
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P-263	Spring 1992	P-301	Summer 1992
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P-265	Spring 1992	P-303	Summer 1992
P-266	Spring 1992	P-304	Summer 1992
P-267	Spring 1992	P-305	Summer 1992
P-268	Spring 1992	P-306	Fall 1992
P-269	Spring 1992	P-307	Fall 1992
P-270	Spring 1992	P-308	Fall 1992
P-271	Spring 1992	P-309	Fall 1992
P-272	Spring 1992	P-310	Fall 1992
P-273	Spring 1992	P-311	Fall 1992
P-274	Spring 1992	P-312	Fall 1992
P-275	Spring 1992	P-313	Fall 1992
P-276	Spring 1992	P-314	Fall 1992
P-277	Spring 1992	P-315	Fall 1992
P-278	Spring 1992	P-316	Fall 1992
P-279	Spring 1992	P-317	Fall 1992
P-280	Summer 1992	P-318	Fall 1992
P-281	Summer 1992	P-319	Fall 1992
P-282	Summer 1992	P-320	Fall 1992
P-283	Summer 1992	P-321	Fall 1992
P-284	Summer 1992	P-322	Fall 1992
P-285	Summer 1992	P-323	Fall 1992
P-286	Summer 1992	P-324	Fall 1992
P-287	Summer 1992	P-325	Fall 1992
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P-291	Summer 1992	P-329	Fall 1992
P-292	Summer 1992	P-330	Fall 1992
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P-294	Summer 1992	P-332	Fall 1992
P-295	Summer 1992	P-333	Fall 1992
P-296	Summer 1992	P-334	Fall 1992
P-297	Summer 1992	P-335	Fall 1992
P-298	Summer 1992	P-336	Fall 1992
P-299	Summer 1992	P-337	Fall 1992

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<u>Order #</u>	<u>Issue</u>	<u>Order #</u>	<u>Issue</u>
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P-339	Fall 1992	P-377	Winter 1993
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P-341	Fall 1992	P-379	Spring 1993
P-342	Fall 1992	P-380	Spring 1993
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P-344	Fall 1992	P-382	Spring 1993
P-345	Fall 1992	P-383	Spring 1993
P-346	Winter 1993	P-384	Spring 1993
P-347	Winter 1993	P-385	Spring 1993
P-348	Winter 1993	P-386	Spring 1993
P-349	Winter 1993	P-387	Spring 1993
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P-351	Winter 1993	P-389	Spring 1993
P-352	Fall 1992	P-390	Spring 1993
P-353	Winter 1993	P-391	Spring 1993
P-354	Winter 1993	P-392	Spring 1993
P-355	Winter 1993	P-393	Spring 1993
P-356	Winter 1993	P-394	Spring 1993
P-357	Winter 1993	P-395	Spring 1993
P-358	Winter 1993	P-396	Spring 1993
P-359	Winter 1993	P-397	Spring 1993
P-360	Winter 1993	P-398	Spring 1993
P-361	Winter 1993	P-399	Spring 1993
P-362	Winter 1993	P-400	Spring 1993
P-363	Winter 1993	P-401	Spring 1993
P-364	Winter 1993	P-402	Spring 1993
P-365	Winter 1993	P-403	Spring 1993
P-366	Winter 1993	P-404	Spring 1993
P-367	Winter 1993	P-405	Spring 1993
P-368	Winter 1993	P-406	Spring 1993
P-369	Fall 1992	P-407	Spring 1993
P-370	Winter 1993	P-408	Spring 1993
P-371	Winter 1993	P-409	Spring 1993
P-372	Winter 1993	P-410	Spring 1993
P-373	Winter 1993	P-411	Summer 1993
P-374	Winter 1993	P-412	Summer 1993
P-375	Winter 1993	P-421	Summer 1993



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P-423	Summer 1993	P-441	Summer 1993
P-424	Summer 1993	P-447	Summer 1993
P-426	Summer 1993	P-448	Summer 1993



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<u>Order #</u>	<u>Issue</u>	<u>Order #</u>	<u>Issue</u>
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M-8	Spring 1992	M-46	Winter 1993
M-9	Summer 1992	M-47	Winter 1993
M-10	Summer 1992	M-48	Winter 1993
M-11	Summer 1992	M-49	Winter 1993
M-12	Summer 1992	M-50	Winter 1993
M-13	Summer 1992	M-51	Winter 1993
M-14	Summer 1992	M-52	Winter 1993
M-15	Summer 1992	M-53	Winter 1993
M-16	Summer 1992	M-54	Winter 1993
M-17	Summer 1992	M-55	Winter 1993
M-18	Summer 1992	M-56	Winter 1993
M-19	Fall 1992	M-57	Winter 1993
M-20	Fall 1992	M-58	Winter 1993
M-21	Fall 1992	M-59	Winter 1993
M-22	Fall 1992	M-60	Winter 1993
M-23	Fall 1992	M-61	Winter 1993
M-24	Fall 1992	M-62	Winter 1993
M-25	Fall 1992	M-63	Winter 1993
M-26	Fall 1992	M-64	Winter 1993
M-27	Fall 1992	M-65	Winter 1993
M-28	Fall 1992	M-66	Spring 1993
M-29	Fall 1992	M-67	Spring 1993
M-30	Fall 1992	M-68	Spring 1993
M-31	Fall 1992	M-69	Spring 1993
M-32	Fall 1992	M-70	Spring 1993
M-33	Fall 1992	M-71	Spring 1993
M-34	Winter 1993	M-72	Spring 1993
M-35	Winter 1993	M-73	Spring 1993
M-36	Winter 1993	M-74	Spring 1993
M-37	Winter 1993	M-75	Spring 1993
M-38	Winter 1993	M-76	Spring 1993
M-39	Winter 1993	M-77	Spring 1993
M-40	Winter 1993	M-78	Spring 1993
M-41	Winter 1993	M-79	Spring 1993
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M-44	Winter 1993	M-82	Spring 1993



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<u>Order #</u>	<u>Issue</u>	<u>Order #</u>	<u>Issue</u>
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M-84	Spring 1993	M-102	Summer 1993
M-85	Spring 1993	M-104	Summer 1993
M-90	Summer 1993	M-113	Summer 1993
M-91	Summer 1993	M-115	Summer 1993
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M-96	Summer 1993		

## Provincial Compliance Investigations

<u>Investigation #</u>	<u>Issue</u>	<u>Investigation #</u>	<u>Issue</u>
I91-02P	Spring 1992	I92-08P	Fall 1992
I91-11P	Fall 1992	I92-09P	Spring 1993
I91-19P	Summer 1992	I92-10P	Summer 1992
I91-22P	Spring 1992	I92-12P	Winter 1993
I91-23P	Summer 1992	I92-15P	Summer 1992
I91-24P	Fall 1992	I92-18P	Summer 1993
I91-35P	Summer 1992	I92-19P	Spring 1993
I91-38P	Summer 1992	I92-23P	Winter 1993
I91-39P	Summer 1992	I92-25P	Fall 1992
I91-40P	Summer 1992	I92-26P	Fall 1992
I91-43P	Fall 1992	I92-27P	Fall 1992
I91-47P	Fall 1992	I92-28P	Spring 1993
I91-48P	Summer 1992	I92-29P	Spring 1993
I91-52P	Fall 1992	I92-30P	Summer 1993
I91-53P	Summer 1992	I92-33P	Spring 1993
I91-57P	Summer 1992	I92-34P	Summer 1993
I91-59P	Fall 1992	I92-35P	Fall 1992
I91-60P	Spring 1992	I92-38P	Summer 1993
I91-61P	Fall 1992	I92-39P	Summer 1993
I91-62P	Summer 1992	I92-41P	Fall 1992
I91-65P	Fall 1992	I92-42P	Winter 1993
I91-66P	Fall 1992	I92-45P	Spring 1993
I91-67P	Fall 1992	I92-46P	Winter 1993
I91-68P	Summer 1992	I92-47P	Fall 1992
I91-69P	Spring 1993	I92-49P	Summer 1993
I91-71P	Fall 1992	I92-50P	Fall 1992
I91-79P	Summer 1992	I92-52P	Summer 1993
I91-80P	Summer 1992	I92-53P	Summer 1993
I91-81P	Summer 1992	I92-56P	Summer 1993
I91-84P	Fall 1992	I92-61P	Summer 1993
I91-87P	Spring 1992	I92-64P	Spring 1993
I91-89P	Spring 1992	I92-71P	Summer 1993
I91-90P	Winter 1993	I93-005P	Summer 1993
I91-94P	Fall 1992	I93-006P	Summer 1993
I92-03P	Summer 1992	I93-008P	Summer 1993
I92-05P	Summer 1992	I93-026P	Summer 1993
I92-06P	Winter 1993		
I92-07P	Summer 1992		



## Municipal Compliance Investigations

<u>Investigation #</u>	<u>Issue</u>	<u>Investigation #</u>	<u>Issue</u>
I91-03M	Summer 1992	I92-23M	Summer 1992
I91-07M	Fall 1992	I92-26M	Spring 1993
I91-42M	Summer 1992	I92-28M	Spring 1993
I91-43M	Winter 1993	I92-29M	Spring 1993
I91-44M	Spring 1992	I92-31M	Spring 1993
I91-45M	Summer 1992	I92-32M	Winter 1993
I91-46M	Summer 1992	I92-33M	Winter 1993
I91-47M	Summer 1992	I92-34M	Summer 1993
I91-48M	Spring 1992	I92-35M	Fall 1992
I91-49M	Spring 1992	I92-36M	Fall 1992
I91-54M	Spring 1992	I92-38M	Winter 1993
I91-55M	Summer 1992	I92-40M	Fall 1992
I91-56M	Summer 1992	I92-50M	Fall 1992
I91-57M	Spring 1992	I92-54M	Winter 1993
I91-60M	Summer 1992	I92-55M	Summer 1993
I91-62M	Summer 1992	I92-56M	Spring 1993
I91-63M	Spring 1992	I92-59M	Summer 1993
I91-66M	Fall 1992	I92-60M	Fall 1992
I91-67M	Fall 1992	I92-61M	Fall 1992
I91-70M	Winter 1993	I92-64M	Summer 1993
I92-01M	Summer 1992	I92-65M	Winter 1993
I92-02M	Winter 1993	I92-67M	Spring 1993
I92-03M	Spring 1992	I92-71M	Summer 1993
I92-05M	Summer 1992	I92-72M	Summer 1993
I92-06M	Fall 1992	I92-73M	Summer 1993
I92-07M	Spring 1993	I92-82M	Summer 1993
I92-09M	Summer 1992	I92-87M	Summer 1993
I92-10M	Summer 1992	I92-88M	Summer 1993
I92-11M	Summer 1993	I92-92M	Spring 1993
I92-12M	Summer 1993	I92-93M	Spring 1993
I92-13M	Winter 1993	I92-94M	Spring 1993
I92-14M	Spring 1993	I93-013M	Summer 1993
I92-16M	Fall 1992		
I92-17M	Summer 1992		
I92-19M	Spring 1993		
I92-20M	Spring 1993		
I92-21M	Summer 1992		
I92-22M	Fall 1992		

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# IPC PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## ORDERS

All IPC orders are highlighted briefly below. Selected orders include textual summaries. This information is provided for convenience only. For accurate reference, refer to the full-text orders available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8.

### ORDER P-449

#### APPEAL P-9200633

Institution: Ontario Human Rights  
Commission

APRIL 29, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

solicitor client privilege • law enforcement  
• investigation • report • advice to  
government • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy

### ORDER P-450

#### APPEAL P-9300005

Institution: Ministry of the Solicitor General  
and Correctional Services

APRIL 29, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • compiled as part  
of investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • personal privacy

## AT A GLANCE

### ORDERS issued between April 24, 1993 and August 6, 1993.

#### Boards of Commissioners of Police

Durham Region - M-161  
Metro Toronto - M-127, M-128, M-144,  
Ottawa - M-131

#### Boards of Education

Halton - M-126, M-137, M-140, M-145,  
M-152, M-154, M-163, M-166, M-171  
Hamilton - M-134  
Simcoe County - M-156  
Toronto - M-148  
York Region - M-143

#### Cities

Brampton - M-149  
Brockville - M-134  
Kingston - M-151  
Toronto - M-169

#### Corporations

of the City of Nepean - M-130  
of the Town of Markham - M-150  
of the Town of Whitby - M-147  
Management Board of Cabinet - P-468  
Management Board Secretariat - P-491  
Metropolitan Licensing Commission - M-157,  
M-158

Ministry of the Attorney General - P-458,  
P-467, P-481, P-504, P-505, P-506

Ministry of Community and Social Services -  
P-455, P-500, P-511

Ministry of Consumer and Commercial  
Relations - P-465, P-478

Ministry of Culture, Tourism and Recreation -  
P-472

Ministry of Economic Development and Trade -  
P-508

Ministry of Environment - P-490

Ministry of Environment and Energy - P-479,  
P-501, P-503, P-512, P-513

Ministry of Finance - P-452, P-480, P-483,  
P-502

Ministry of Health - P-451, P-456, P-457,  
P-471, P-475, P-484, P-486, P-494, P-495,  
P-496, P-497, P-499, P-509

Ministry of Housing - P-469, P-470, P-485

Ministry of Municipal Affairs - P-493

Ministry of Northern Development and Mines -  
P-489

Ministry of the Solicitor General - P-450

Ministry of the Solicitor General and  
Correctional Services - P-453, P-460,  
P-464, P-476, P-482

Ministry of Transportation - P-459

Municipality of Metro Toronto - M-133

Northern College of Applied Arts and  
Technology - P-461

Ontario Human Rights Commission - P-449,  
P-466, P-473, P-492, P-507, P-510

Ontario Hydro - P-474, P-477

Ontario Native Affairs Secretariat - P-454,  
P-463, P-488

Ottawa-Carleton Regional Transit Commission -  
M-139, M-159, M-160, M-164

#### Police Services Boards

Regional Municipality of Halton - M-165  
London - M-170

Metro Toronto - M-153

Waterloo Regional - M-155, M-167

Police - Town of Michipicoten - M-146

#### Regional Municipalities

of Hamilton-Wentworth - M-129  
of Waterloo - M-132

Separate School Board - Lanark Leeds and  
Grenville County RC - M-136

Stadium Corporation - P-462, P-487

#### Towns

of Gravenhurst - M-162  
(Township) of Mariposa - M-168  
of Michipicoten - M-142  
of Parkhill - M-141  
of Whitchurch-Stouffville - M-138

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**ORDER P-451**  
**APPEAL P-9300014**

Institution: Ministry of Health  
MAY 4, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

custody or control • reasonable steps to locate record

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**ORDER P-452**  
**APPEAL P-910878**

Institution: Ministry of Finance  
MAY 6, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • law enforcement  
• confidential source • information received in confidence • relations with other governments • advice to government

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**ORDER P-453**  
**APPEAL P-9300004**

Institution: Ministry of the Solicitor General and Correctional Services  
MAY 6, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record  
• personal information

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**ORDER P-454**  
**APPEAL P-9200171**

Institution: Ontario Native Affairs Secretariat  
MAY 7, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

third party information • scientific  
• technical • "supplied" • "in confidence"  
• reasonable expectation of • harm  
• competitive position • similar information • no longer supplied • undue loss or gain • economic or other interests

• solicitor client privilege • in contemplation of or for use • in litigation  
• advice to government • public information • personal information  
• unjustified invasion of • personal privacy  
• public interest override

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**ORDER P-455**  
**APPEAL P-9200481**

Institution: Ministry of Community and Social Services  
MAY 7, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

authorization to release information  
• personal information • medical, psychiatric or patient records  
• presumption of • unjustified invasion of  
• another individual's personal privacy

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**ORDER P-456**  
**APPEAL P-9300040**

Institution: Ministry of Health  
MAY 11, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

clarity of request - reasonable effort to identify record

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**ORDER P-457**  
**APPEAL P-9300041**

Institution: Ministry of Health  
MAY 11, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record  
• reasonable effort to identify record

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**ORDER P-458**  
**APPEAL P-9200235**

Institution: Ministry of the Attorney General  
MAY 14, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

clarity of request • reasonable effort to identify record • reasonable steps to locate record

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**ORDER P-459**  
**APPEAL P-9300035**

Institution: Ministry of Transportation  
MAY 14, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-460**  
**APPEAL P-9200672**

Institution: Ministry of the Solicitor General and Correctional Services  
MAY 14, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • law enforcement  
• confiscated record • *Ministry of Correctional Services Act* • danger to life or safety • correctional authority • security concerns

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**ORDER P-461**  
**APPEAL P-9200583**

Institution: Northern College of Applied Arts and Technology  
MAY 19, 1993  
(COMMISSIONER WRIGHT)

**KEYWORDS**

economic or other interests • examination questions

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**ORDER P-462**  
**APPEAL P-9200770**

Institution: Stadium Corporation of Ontario Limited  
MAY 19, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • estimate • fee waiver



## ORDER P-463 APPEAL P-9200490

Institution: Ontario Native Affairs

Secretariat

MAY 26, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

third party information • scientific  
• technical • “supplied” • “in confidence”  
• reasonable expectation of • harm  
• competitive position • similar  
information • no longer supplied • undue  
loss or gain • economic or other interests  
• solicitor client privilege • in  
contemplation of or for use • in litigation  
• advice to government • public  
information • personal information  
• unjustified invasion of • personal privacy  
• public interest override • fees • estimate  
• fee waiver

The Secretariat received a request for access to research documents pertaining to the comprehensive land claim made by 5,000 Algonquin Indians as well any negotiations, policy documents, claims issue documents, any written agreements, and any written agreement between the province and federal government on this claim. The Secretariat refused to provide access on the basis of sections 13(1), 17(1), 19, 21(3)(d) and (g), 18(1)(d) and (e), and 22 of the *Act*. The Secretariat decided to release approximately 1,000 pages of records to the appellant. The Secretariat issued a fee estimate of \$1,480 to apply to documents relating to negotiation policy and inter-provincial agreements. During mediation, the appellant provided documentation respecting his financial status in support of his request for a fee waiver. Following a review of this information, the Secretariat decided not to waive the fee. The appellant asserted that there is a public interest in the disclosure of all documents that were the subject of his request pursuant to section 23 of the *Act*.

### ORDER

The decision of the Secretariat was partially upheld.

The records at issue consisted of the following: a letter compiled by an affected person commenting on a researcher's work; a list of researchers with margin notes made by the author of the letter respecting the suitability of the researchers for certain work; and a report consisting of research material and margin notes made by the author of the letter.

#### Section 17

Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the *Act*. The records at issue in this case represent a collection of historical articles with some evaluative comments. They neither test a scientific hypothesis, set out conclusions based on observations, nor present findings according to a specific methodology. The records do not contain scientific information.

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering, or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or

thing. Based on this definition, the Assistant Commissioner found that the information contained in the records could not reasonably be said to fall into the category of technical information. Therefore, the records did not qualify for exemption under section 17.

#### Section 18

In his examination of the records, the Assistant Commissioner did not find any information that could be reasonably characterized as “positions, plans, procedures, criteria or instructions”. The Secretariat neither identified those portions of the record which fell into this category, nor indicated which information would be applied to negotiations. Accordingly, the Secretariat has failed to satisfy the section 18(1)(e) test and the exemption does not apply. The Secretariat has also failed to demonstrate a clear, specific and understandable linkage between its allegations of harm under section 8(1)(d) and the disclosure of the types of records at issue in this appeal. Nor is it evident on the face of the records that the consequences contemplated by section 8(1)(d) could reasonably be expected to result from disclosure. Therefore, the records do not qualify for exemption under 8(1)(d) or (e).

#### Section 19

The fact that the material provided by the affected person may have subsequently been used in helping to structure legal advice or in litigation does not alter the fact that the records were not prepared for such purposes originally. Therefore, the records do not qualify for exemption under section 19.

#### Section 13

In order to establish that the section 13 exemption applies to the record, the Assistant Commissioner must first determine whether the affected person can be

said to have been "retained" by the Secretariat.

While payment of a fee is an important indicator in determining whether a formal engagement of services has occurred, it is not determinative. In this case, the Secretariat intended to and did retain the services of the affected person, notwithstanding the absence of a fee. The Assistant Commissioner then proceeded to determine that some of the records qualified for exemption under section 13(1).

#### Section 22(a)

The Secretariat had not provided the appellant with sufficient information which would enable the appellant to identify the records in question. Consequently, the records do not qualify for exemption under section 22(a).

#### Personal Information

The names and addresses of persons identified in an employment or professional capacity and their apparent business addresses do not constitute personal information. Addresses which appear to be residential rather than employment addresses are personal information and are properly exempt from disclosure under section 21(1) of the *Act*.

#### Section 23

The Assistant Commissioner was not convinced that there existed a compelling public interest in the release of the remainder of the records which clearly outweighed the purpose of section 13 and 21.

#### Fee Waiver

The Assistant Commissioner found that the Secretariat's decision not to waive the fee of \$1,480 was based on fair and equitable grounds. However, the Assistant Commissioner made it clear that his

decision was based on the somewhat unique history of the case. He encouraged the Secretariat to work constructively with the appellant with respect to any subsequent request which he might file with the institution.

#### SECTIONS CONSIDERED

2, 13, 17, 18, 19, 21, 23

#### PREVIOUS ORDERS CONSIDERED

24, 36, 87, 52, 118, 157, 161, 210, P-304, P-326, P-348, P-402, P-428, P-441, P-356, M-118

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### ORDER P-464 APPEAL P-9200100

Institution: Ministry of the Solicitor General and Correctional Services

MAY 28, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-465 APPEAL P-9200102

Institution: Ministry of Consumer Relations

MAY 28, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-466 APPEAL P-9300011

Institution: Ontario Human Rights Commission

MAY 28, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

personal information • compiled as part of investigation • *Ontario Human Rights Act* • presumption of • unjustified invasion of • another individual's personal privacy

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### ORDER P-467 APPEAL P-9200101

Institution: Ministry of the Attorney General

JUNE 3, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record • personal information • unjustified invasion of • personal privacy • law enforcement • report • investigation • *Criminal Code of Canada* • solicitor client privilege • crown counsel

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### ORDER P-468 APPEAL P-9200683

Institution: Management Board of Cabinet

JUNE 4, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

cabinet records • advice to government • economic or other interests • positions • personal information • opinions or views • highly sensitive • unjustified invasion of • personal privacy

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### ORDER P-469 APPEAL P-9200688

Institution: Ministry of Housing

JUNE 4, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

personal information • identifiable individual • opinions or views • unjustified invasion of • another individual's personal privacy • highly sensitive • supplied in confidence • relevant to • fair determination of rights • consent to access to

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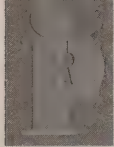
### ORDER P-470 APPEAL P-9200686

Institution: Ministry of Housing

JUNE 4, 1993

(INQUIRY OFFICER FINEBERG)





#### KEYWORDS

personal information • identifiable individual • consent to access to • personal information • recommendations or evaluations • relevant to • fair determination of rights • presumption of • unjustified invasion of • personal privacy

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### ORDER P-471 APPEAL P-9300041

Institution: Ministry of Health

JUNE 4, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-472 APPEAL P-9200815

Institution: Ministry of Culture, Tourism and Recreation

JUNE 8, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

economic or other interests • burden of proof • third party information • technical • financial • commercial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position

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### ORDER P-473 APPEAL P-9200824

Institution: Ontario Human Rights Commission

JUNE 10, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy • reasonable steps to locate record

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### ORDER P-474 APPEAL P-9200463

Institution: Ontario Hydro

JUNE 10, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

fees • estimate • fee waiver • standard of review

A request was made to Ontario Hydro for access to documents relating to 23 projects originally considered by staff for inclusion in the rehabilitation of the Bruce A Nuclear Generating Station and which were subsequently excluded from that project. Hydro issued an interim decision in which it proposed to grant partial access to the records and provided the requester with a fee estimate for search time and for preparation of these records. The requester sought a fee waiver on the basis that dissemination of the records would benefit public health or safety pursuant to section 57(4)(c) of the *Act*. Hydro decided not to waive the fee. During mediation, Hydro reduced its fee estimate significantly following final confirmation from the appellant that the number of records sought had been reduced.

#### ORDER

Ontario Hydro was ordered to waive the fee in the appeal and to render a final decision on access to the records.

Hydro raised an issue respecting the standard of review under the *Act* which should apply in appeals involving an institution's decision to deny a fee waiver. The Assistant Commissioner found that the standard of review which should apply to the review by the Commissioner or his delegate to decisions issued under section 57(4) of the *Act* is one of correctness. The phrase "in the head's opinion" found in section 57(4) means only that the head of an institution has a duty to de-

termine whether it is fair and equitable in a particular case to waive a fee. The wording does not affect the Commissioner's statutory authority to review the correctness of that decision.

The Assistant Commissioner found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4) of the *Act*.

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether dissemination of the record would yield a public benefit by (a) disclosing a public health or safety concern or (b) contributing meaningfully to the development of understanding of an important public health or safety issue;
4. The probability that the requester will disseminate the contents of the record.

The safety of Ontario's nuclear generating facilities is a matter of considerable importance to the general public. It is clear that the records in question relate directly to a public health and safety issue. That is, whether the Bruce nuclear generating station can continue to be operated in the safe manner. It is also clear that the debate respecting the safety of this facility is complex and that both Hydro and various interest groups have taken divergent positions on this subject which are often difficult for the public to reconcile. The records which are the subject of this appeal, if disseminated, would contribute meaningfully to the development of understanding on the subject of the maintenance of aging nuclear reactors. Finally, based on the



representations received from the appellant, the Assistant Commissioner is satisfied that these records, if they are ultimately subject to release, will likely be disseminated to the public.

**SECTIONS CONSIDERED**

57(4)

**PREVIOUS ORDERS CONSIDERED**

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**ORDER P-475**  
**APPEAL P-9200276**

Institution: Ministry of Health

JUNE 14, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

solicitor client privilege

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**ORDER P-476**  
**APPEAL P-9200400**

Institution: Ministry of the Solicitor General and Correctional Services

JUNE 11, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-477**  
**APPEALS P-9200756 AND P-9300019**

Institution: Ontario Hydro

JUNE 11, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • advice to government • economic or other interests • solicitor client privilege • reasonable steps to locate record

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**ORDER P-478**  
**APPEALS P-9200763 AND P-9200764**

Institution: Ministry of Consumer and Commercial Relations

JUNE 11, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • *Bailiffs Act* • law enforcement • confidential source • reasonable steps to locate record

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**ORDER P-479**  
**APPEAL P-9200651**

Institution: Ministry of Environment and Energy

JUNE 21, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • technical • "supplied" • "in confidence" • reasonable expectation of • harm

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**ORDER P-480**  
**APPEAL P-910583**

Institution: Ministry of Finance

JUNE 21, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

law enforcement • investigation • report • *Loan and Trust Corporations Act* • inspection • relations with other governments • third party information • commercial • financial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • undue loss or gain • personal information • compiled as part of investigation • relevant to • fair determination of rights • presumption of • unjustified invasion of • personal privacy • advice to government

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**ORDER P-481**  
**APPEAL P-9200728**

Institution: Ministry of the Attorney General

JUNE 17, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-482**  
**APPEAL P-9200622**

Institution: Ministry of the Solicitor General and Correctional Services

JUNE 21, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

content of decision letter • law enforcement • *Police Services Act* • personal information • deceased persons • medical, psychiatric or patient records • compiled as part of investigation • presumption of • unjustified invasion of • personal privacy • public scrutiny • obligation to disclose • public interest override

The Ministry received a request for access to the investigation file relating to a motor vehicle accident in which four people died. Access was denied in part to 14 pages pursuant to sections 14(1)(a), 14(1)(b), 14(1)(l) and/or section 21 of the *Act*.

**ORDER**

The Ministry's decision was upheld.

The appellant raised the issue of whether the Ministry's decision letter sufficiently described the nature of the severed information or explained why certain information was severed.

In the Inquiry Officer's view, the requirements of section 29 of the *Act* were met. Although the decision letter did not provide general descriptions of the severed material, at least partial access was given to every page of the record. It was

apparent on reviewing the severed version of the record disclosed to the appellant that the severed portions are, for instance, part of a page from a police notebook, or a part of a statement given to police. Each page partially disclosed to the appellant had the severed portions clearly marked with the exemption claimed noted on the page. The decision letter briefly explained why exemptions were claimed. The partial disclosure of each page made the nature of the severances readily apparent, and as a result, greater particularity was not necessary and the requirements of section 29 had been met.

The Inquiry Officer went on to find that sections 14(1)(a) and 21 exempted the records at issue from disclosure.

The Inquiry Officer also considered the application of sections 11(1) and 23 of the *Act* which had been raised by the appellant.

The Inquiry Officer found that the duties and responsibilities set out in section 11 of the *Act* belong to the head alone. As a result, the Information and Privacy Commissioner or his delegate do not have the power to make an order pursuant to section 11 of the *Act*.

Section 23 does not apply to exemptions from disclosure under section 14. There is not a compelling public interest in the disclosure of the information which qualifies for exemption under section 21 of the *Act*, in the circumstances of this appeal.

#### SECTIONS CONSIDERED

29(1)(b), 14(1)(a), 2, 21, 11, 23

#### PREVIOUS ORDERS CONSIDERED

187, P-285, P-293, M-23

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### ORDER P-483 APPEAL P-9200540

Institution: Ministry of Finance

JUNE 24, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

reasonable steps to locate record • cabinet records • solicitor client privilege

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### ORDER P-484\* APPEAL P-9200367

Institution: Ministry of Health

JUNE 24, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

advice to government

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### ORDER P-485 APPEAL P-9200703

Institution: Ministry of Housing

JUNE 25, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

employment competition • personal information • recommendations or evaluations • racial origin • employment history • public scrutiny • relevant to • fair determination of rights • presumption of • unjustified invasion of • personal privacy • reasonable steps to locate record • method of access

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### ORDER P-486 APPEAL P-9300094

Institution: Ministry of Health

JUNE 25, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-487 APPEALS P-9300094, P-9200395 AND P-9200769

Institution: Stadium Corporation of Ontario Limited

JUNE 25, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

third party information • advice to government • economic or other interests • monetary value • plans or positions • reasonable expectation of harm

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### ORDER P-488 APPEAL P-9200766

Institution: The Ontario Native Affairs Secretariat

JUNE 29, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information

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### ORDER P-489 APPEAL P-9200381

Institution: Ministry of Northern Development and Mines

JULY 19, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

audit report • third party information • commercial • financial • "supplied" • "in confidence"

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### ORDER P-490 APPEAL P-9300039

Institution: Ministry of the Environment

JUNE 30, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

reasonable steps to locate record • clarity of request • fees

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## ORDER P-491 APPEAL P-9300107

Institution: Management Board Secretariat

JULY 7, 1993

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

fees • estimate • record • creation

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## ORDER P-492 APPEAL P-9200434

Institution: Ontario Human Rights  
Commission

JULY 8, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

personal information • solicitor client  
privilege • law enforcement • report  
• advice to government

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## ORDER P-493 APPEAL P-9200768

Institution: Ministry of Municipal Affairs

JULY 9, 1993

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

advice to government • third party  
information • commercial • "supplied"  
• "in confidence" • reasonable expectation  
of • harm • competitive position

The Ministry received a request for access to all information relating to the proposed projects known as Transportation Place and Ontario International Land Port. The Ministry denied access to six records in full and 13 records in part pursuant to sections 13 and 17 of the *Act*.

### ORDER

The decision of the Ministry was partially upheld.

The Inquiry Officer found that parts of the record qualified for exemption under section 13 of the *Act*. Other portions of

the record did not qualify as they did not contain "advice".

The Inquiry Office discussed the meaning of commercial information found in section 17(1) of the *Act*. Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations. Consistent with the construction of the various categories of information contained in section 17, the term "commercial" should be interpreted as being distinct from the term "financial" or "trade secret". The Inquiry Officer then went on to find that the information for which section 17 had been claimed did not meet part three of the three-part test for the application of section 17.

### SECTIONS CONSIDERED

13, 17

### PREVIOUS ORDERS CONSIDERED

118, 161, P-218, P-219, P-228, P-241,  
P-246, P-248, P-304, P-348, P-393

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## ORDER P-494\* APPEALS P-910590, P-910956, P-910989, P-910991, P-911122, P-911137

Institution: Ministry of Health

JULY 13, 1993

(COMMISSIONER WRIGHT)

### KEYWORDS

purposes of the *Act* • custody or control  
• personal information • medical,  
psychiatric or patient records • relevant to  
• fair determination of rights • highly  
sensitive • supplied in confidence  
• presumption of • unjustified invasion of  
• another individual's personal privacy

The Ministry received six separate requests from caregivers employed at Kingston Psychiatric Hospital for access to any and

all information concerning the caregiver that may be in the possession of the Psychiatric Patient Advocate Office (PPAO) at Kingston Psychiatric Hospital or at the Provincial Psychiatric Patient Advocates Office in Toronto.

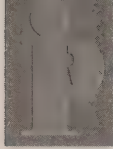
Access to the records in the advocate client files was denied on the basis that the records were not covered by the *Act* by virtue of the application of section 65(2)(b). The requesters appealed the denial of access. In Interim Order P-374, former Assistant Commissioner Tom Mitchinson found that the PPAO records did not fall within the scope of section 65(2)(b) and ordered the Ministry to provide proper decision letters regarding access to each appellant. The Ministry subsequently denied access to the records on the basis that the PPAO files were not within the custody and control of the Ministry pursuant to section 10(1) of the *Act*. The records at issue in these appeals consist of client contact sheets, memoranda from the patient advocate to staff at the facility, internal facility memoranda and correspondence.

### ORDER

The Commissioner found that the records were in the custody and control of the Ministry.

The PPAO and the Ministry raised the concern that by providing copies of the records to the Commissioner's Office, they might prejudice their positions that the Ministry does not have custody or control of the records. In many situations access by the Commissioner's Office to the records at issue in an appeal is an integral element of the notion of independent review. It would be unfair in the circumstances of these appeals, to require the production of the records from an institution and then use the fact of production, in itself, to refute the position advanced on the issue of custody





and control. To do so would effectively penalize the institution for its cooperation and could well generate unnecessary and unproductive administrative and legal wrangling. Therefore, simply providing the Commissioners Office with a copy of a record does not, in and of itself, "prejudice" the position of an institution that it does not have custody and/or control of that record.

The Commissioner then went on to determine that records maintained by the PPAO fall within the overall custody and control of the Ministry for the purposes of the *Act*. The memorandum of understanding between the Ministry and PPAO does not indicate that the Ministry has abdicated its authority over the PPAO. The memorandum provides that the PPAO is responsible for maintaining confidential records relating to its advocacy operations. This does not mean that the PPAO has exclusive custody and/or control over records which it has been given the responsibility to maintain, to the exclusion of the Ministry, to which the PPAO is ultimately accountable.

The Commissioner found that the records each contain the personal information of one or more of the appellants and the personal information of one or more patients.

One record consisted of the second page of a letter written by an appellant in one of the appeals. In this letter, the appellant mentions the name of a patient. The patient's name has been severed. In the Commissioner's view, no purpose would be served by withholding this record from its own author and, accordingly, he found that this record should be disclosed with the name of the patient severed.

The Commissioner found that the remainder of the records were properly exempted from disclosure pursuant to section 49(b) of the *Act*.

In its representations the PPAO requested that, should the Commissioner consider any of the assertions of fact to be disputed, the PPAO be afforded the opportunity to assert them by way of affidavit or in a hearing. The procedures for processing appeals which have been developed by the Commissioner's Office provide that representations are to be made in writing. In fact, the PPAO has made its representations in writing and indicates that it is satisfied with doing so provided that the Commissioner accepts the assertions of fact and agrees with the written arguments. The Commissioner was of the view that this is not a situation where it would be appropriate to depart from the standard procedures for the receipt of representations.

#### SECTIONS CONSIDERED

10(1), 2, 49(b)

#### PREVIOUS ORDERS CONSIDERED

P-440, P-312

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### ORDER P-495

#### APPEAL P-9300084

Institution: Ministry of Health

JULY 13, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-496\*

#### APPEAL P-9200679

Institution: Ontario Securities Commission

JULY 14, 1993

(COMMISSIONER WRIGHT)

#### KEYWORDS

public information • purposes of the *Act*

The OSC received a request for a copy of a current list of market dealers, a current list of securities dealers and every "Form 20" filed with the Ontario Securities Commission during 1991 and 1992. The OSC acknowledged that the records responsive to the request existed but denied access pursuant to section 22(a) of the *Act*. The OSC advised the requester that the records could be obtained by a subscription through a private company, or at the Metropolitan Toronto Reference Library. The requester appealed the decision.

The appellant advised the Appeals Officer that the records were not available at the library. The Appeals Officer verified that the "Form 20's" could be obtained at the library and the appellant withdrew his appeal as it related to these records. The remaining records were not available from the library.

#### ORDER

The institution was ordered to disclose the records at issue.

Section 22(a) is unique among the exemptions contained in Part II of the *Act*. The other exemptions, if applicable, permit an institution to deny access to the requested information because of its content or the potential harm that might reasonably be expected to result from disclosure. Under section 22(a), the requested information is not disclosed to the requester under the *Act* because the institution claims that it is publicly available elsewhere. The section should not be applied in a way that could indirectly prevent or limit the public access to information. To do so would be contrary to the purposes of the *Act*. Basing an individual's right to access on his or her ability to meet conditions for access determined by a private sector vendor may result in inequitable access to information held by government. In the circum-

stances of this appeal, although the private sector entity may provide a system of access, it does not provide a regularized system of access available to the members of the public generally. The private sector entity is not the equivalent of a government publication centre or a government run public registry.

In a postscript to the order, the Commissioner commented that he was aware that the government is actively looking at the information it holds as a potential source of non-tax revenue. Although information may be "the commodity of the 90's", a very real question arises as to how the governments new initiatives will maintain and balance the rights of the public to access information for which it has already paid with the desire to find new sources of revenue. There is a fundamental component of this balancing that government sees itself as a custodian or trustee of the information it holds. In the Commissioner's view, to create an information elite where only those who can afford to pay will have access to government held information would be unacceptable in an open and democratic society.

In some cases government should be able to sell the information it holds. There are valid reasons for this, both economic and otherwise. However, decisions on what types of information should be sold must always be made against the backdrop that members of the general public must continue to have a right of access to the information held by government.

**SECTIONS CONSIDERED**

22(a)

**PREVIOUS ORDERS CONSIDERED**

P-327

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**ORDER P-497**  
**APPEAL P-9300095**

Institution: Ministry of Health

JULY 14, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • commercial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • competitive  
position

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**ORDER P-499**  
**APPEAL P-9300135**

Institution: Ministry of Health

JULY 16, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • opinions or views  
• unjustified invasion of • another  
individual's personal privacy

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**ORDER P-500**  
**APPEAL P-9300023**

Institution: Ministry of Community and  
Social Services

JULY 16, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

Commissioner • consideration of section  
not raised by institution • third party  
information • trade secret • "supplied"  
• "in confidence" • reasonable expectation  
of • harm • competitive position

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**ORDER P-501**  
**APPEAL P-9200803**

Institution: Ministry of Environment and  
Energy

JULY 20, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

solicitor client privilege • crown counsel

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**ORDER P-502**  
**APPEAL P-9300123**

Institution: Ministry of Finance

JULY 21, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • estimate • interim decision  
• personal information • fee waiver

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**ORDER P-503**  
**APPEAL P-9200541**

Institution: Ministry of Environment and  
Energy

JULY 28, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

cabinet records • reasonable steps to locate  
record

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**ORDER P-504**  
**APPEAL P-9200682**

Institution: Ministry of the Attorney General

JULY 23, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

solicitor client privilege

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**ORDER P-505**  
**APPEAL P-9300153**

Institution: Ministry of the Attorney General

JULY 23, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

custody or control

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**ORDER P-506**  
**APPEAL P-9300028**

Institution: Ministry of the Attorney General

JULY 26, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record • solicitor  
client privilege • advice to government  
• public interest override • burden of proof

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**ORDER P-507**  
**APPEAL P-9300118**

Institution: Ontario Human Rights  
Commission

JULY 30, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

law enforcement • investigation • interfere  
with law enforcement

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**ORDER P-508**  
**APPEAL P-9200654**

Institution: Ministry of Economic  
Development and Trade

JULY 30, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

advice to government • factual material  
• cabinet records • opinions or  
recommendations • substance of  
deliberations

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**ORDER P-509**  
**APPEAL P-9300137**

Institution: Ministry of Health

AUGUST 3, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

custody or control • notice to parties by  
head

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**ORDER P-510**  
**APPEAL P-9200730**

Institution: Ontario Human Rights  
Commission

AUGUST 4, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

law enforcement • report • investigation  
• personal information • consent to access  
to personal information • relevant to • fair  
determination of rights • unjustified  
invasion of • another individual's personal  
privacy

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**ORDER P-511**  
**APPEAL P-9200186**

Institution: Ministry of Community and  
Social Services

AUGUST 4, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

deemed refusal • reasonable steps to locate  
record

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**ORDER P-512**  
**APPEAL P-9200718**

Institution: Ministry of Environment and  
Energy

AUGUST 5, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • commercial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • competitive  
position • burden of proof • public interest  
override

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**ORDER P-513**  
**APPEAL P-910252**

Institution: Ministry of Environment and  
Energy

AUGUST 6, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

*Environmental Protection Act* • third party  
information • technical • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position • undue loss  
or gain

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**ORDER M-126**  
**APPEAL M-9200243**

Institution: Halton Board of Education

APRIL 26, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-127**  
**APPEAL M-9200337**

Institution: Metropolitan Toronto Board of  
Commissioners of Police

APRIL 28, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

application of the *Act* • notes in  
connection with a proceeding • *Courts of  
Justice Act* • unjustified invasion of  
• another individual's personal privacy  
• law enforcement • security concerns  
• investigation • report

The Police received a request for all information pertaining to a search of a person by a police officer in a court room. The Police denied access to a document entitled "Internal Correspondence" and five other pages which are excerpts from a police officer's notebook pursuant to section 38(a) and (b), 8(1)(i) and 8(2)(a) of the *Act*. An affected person in the appeal raised two additional issues: whether the records at issue are subject to the *Act* and; if the *Act* applies, whether the appellant should be able to obtain indirectly information that he would be prohibited from obtaining directly.

**ORDER**

The Assistant Commissioner ordered the Police to disclose the records to the appellant.

The affected person did not refer specifically to section 65(3) of the *Act*, however, this section is relevant to the representations made by that party. The Assistant Commissioner found that the records could not be described as notes prepared by or for a person presiding in a proceeding in a court of Ontario, prepared for that person's personal use in connection with a proceeding. That was the case because the notes had been authored by a police officer. The Assistant Commissioner also noted that, quite apart from



this characterization, where notes of this nature are provided to the Police, they would cease to be employed for the personal use of the Judge. Section 137(2) of the *Courts of Justice Act*, which is a confidentiality provision that overrides the application of the provincial *Act*, is not applicable to the facts of this case.

The affected person submits that, where information was originally compiled by an individual presiding over a hearing and then shared with the Police, it would be wrong for an appellant to obtain this material from an alternative collateral source, namely the Police. Since the party's representations did not indicate that a presiding Judge actually authored any of the written notes, the Assistant Commissioner did not accept this argument.

The Assistant Commissioner found that concerns expressed by an affected person in her official capacity did not qualify as that person's personal information for the purposes of the *Act*. Therefore, the records at issue contained the personal information of the appellant only and section 38(b) does not apply.

Section 8(1)(i) does not apply because the records at issue relate to an incident which occurred in a court room over a year ago. Disclosure of information which would reveal the assignment of a particular police officer to an area of a facility over a year ago could not reasonably be expected to endanger the security of the building now or in the future. Section 8(2)(a) does not apply because neither the internal correspondence nor the police officer's notes meet the definition of a report. Because neither the exemptions in sections 8(1)(i) or 8(2)(a) of the *Act* apply to the record, it was not necessary for the Assistant Commissioner to consider the application of section 38(a).

#### SECTION CONSIDERED

8(1)(i), 8(2)(a), 38(a), 65(3)

#### OTHER LEGISLATION CONSIDERED

*Courts of Justice Act*, Section 137(2)

#### PREVIOUS ORDERS CONSIDERED

P-326, P-333, P-377, M-12

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### ORDER M-128

#### APPEAL M-9200161

Institution: Metropolitan Toronto Board of Commissioners of Police

MAY 6, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

police records • relations with other governments • information received in confidence • unjustified invasion of  
• personal privacy

The Police received a request for access to all of the requester's information filed at number 14 Division. The Police indicated that the requester advised them that he was seeking information concerning his September 1991 arrest for a possession of marijuana.

In his letter of appeal, the appellant stated that he now wanted all of his personal information dating back to 1974 in the custody or control of the Police. The Appeals Officer advised the appellant that the appeal related only to his original request regarding his arrest in 1991.

The Police granted access to some of the records and denied access to others, either in whole or in part pursuant to sections 38(a), 38(b), 8(1)(d) and (e), 8(2)(a), 9(1)(d) and 14 of the *Act*.

#### ORDER

The decision of the Police was partially upheld.

The Inquiry Officer found that some parts of the record did not contain personal information because the infor-

mation in these pages was provided by individuals in their professional capacity or in execution of their employment responsibilities. He found that other pages contained personal information which related solely to the appellant while other information consisted of the personal information which related to individuals other than the appellant.

Two pages of the record are computer printouts, containing the criminal history of the appellant. The Police state that this information was received from the Royal Canadian Mounted Police (the RCMP) and that therefore section 9(1)(d) of the *Act* applies. The information on these two pages was electronically retrieved from the Canadian Police Information Centre (CPIC), a computerized information system with databases to which law enforcement agencies supply information and from which they can obtain a wide range of information. The information in CPIC is comprised of information originally entered in the system by various law enforcement agencies, including non-federal sources.

The Inquiry Officer found that the Police had not provided him with any evidence that the information in the two pages was supplied to CPIC by the RCMP. Based on the examination of the record, it appeared that the information was originally supplied to CPIC by the Police themselves. Therefore, he was unable to conclude that the information on the two pages was received by the Police from the RCMP. Accordingly he found that the records do not qualify for exemption under section 9(1)(d) of the *Act*. Because section 9(1)(d) did not apply, the records could not qualify for exemption under section 38(a).

The Inquiry Officer then went on to find that section 14 applied to the personal



information of individuals other than the appellant.

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**SECTIONS CONSIDERED**

9(1)(d), 38(a), 14(1)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER M-129**  
**APPEAL M-9200371**

Institution: Regional Municipality of  
Hamilton-Wentworth

MAY 6, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • financial history  
• public scrutiny • supplied in confidence  
• highly sensitive • public interest override  
• unjustified invasion of • personal privacy

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**ORDER M-130**  
**APPEAL M-9200433**

Institution: The Corporation of the City of  
Nepean

MAY 13, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

economic or other interests • third party  
information • "supplied" • "in confidence"

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**ORDER M-131**  
**APPEAL M-9200119**

Institution: Ottawa Board of  
Commissioners of Police

MAY 18, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-132**  
**APPEAL M-9200344**

Institution: Regional Municipality of  
Waterloo

MAY 20, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • opinions or views  
• name • evaluation or opinion material

The Region received a request for access to any personnel records pertaining to the requester's unsuccessful application for a nursing aid position with the Region. One record remains at issue. It is entitled "Reference Inquiry" and was exempted by the institution pursuant to section 38(c) of the *Act*.

**ORDER**

The decision of the Region was partially upheld.

The record at issue contained personal information of the appellant only. In his decision, Assistant Commissioner Glasberg pointed out that section 38(c) of the *Act* attempts to address two competing interests. These are: (1) the right of an individual to have access to his or her personal information and (2) the need to protect the flow of frank information to provincial or municipal institutions so that appropriate decisions can be made respecting the awarding of jobs, contracts or other benefits. He then elaborated on the third part of the three part test already established for the application of section 49(c) (the provincial equivalent of section 38(c) of the municipal *Act*). An institution must establish that: (a) the information was supplied to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence and (b) the disclosure of the record would reveal the identity of the source of the information.

The Assistant Commissioner also set out a number of factors which are relevant in deciding whether the third part of the test has been satisfied. These factors are: (1) the expectations of the provider of the reference regarding confidentiality; (2)

the ordinary practice and/or experience of the individual who provided the reference and of the institution which sought the reference with respect to confidentiality; (3) the knowledge of the individual about whom the information relates as to the identity of the provider of the reference; and (4) the nature of the reference information itself insofar as it would identify the provider of the information.

After reviewing the record, the Assistant Commissioner found that some portions of the record would identify the source of the information. Only those portions met all three parts of the test for exemption under section 38(c).

**SECTIONS CONSIDERED**

38(c)

**PREVIOUS ORDERS CONSIDERED**

157, 170, P-238, P-240

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**ORDER M-133**  
**APPEAL M-9200030**

Institution: Municipality of Metropolitan  
Toronto

MAY 26, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-134**  
**APPEAL M-9300040**

Institution: Hamilton Board of Education

MAY 28, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

custody or control • reasonable steps to  
locate record

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**ORDER M-135**  
**APPEAL M-9100433**

Institution: City of Brockville

MAY 28, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record • record  
does not exist • retention • regulations  
• personal information • name  
• recommendations or evaluations • public  
scrutiny • relevant to • fair determination  
of rights • presumption of • unjustified  
invasion of • personal privacy

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**ORDER M-136**  
**APPEAL M-9200450**

Institution: The Lanark Leeds and  
Grenville County Roman Catholic  
Separate School Board

MAY 31, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-137**  
**APPEAL M-9200473**

Institution: Halton Board of Education

JUNE 2, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-138**  
**APPEAL M-9200254**

Institution: The Town of  
Whitchurch-Stouffville

JUNE 3, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

building permit applications • personal  
information • name • address • unjustified  
invasion of • personal privacy

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**ORDER M-139**  
**APPEAL M-9200390**

Institution: Ottawa-Carleton Regional  
Transit Commission

JUNE 4, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • estimate

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**ORDER M-140**  
**APPEAL M-9300062**

Institution: Halton Board of Education

JUNE 9, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable effort to identify record  
• reasonable steps to locate record

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**ORDER M-141**  
**APPEAL M-9200306**

Institution: Town of Parkhill

JUNE 10, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • unjustified invasion  
of • personal privacy

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**ORDER M-142**  
**APPEAL M-9200137**

Institution: Town of Michipicoten

JUNE 15, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record • solicitor  
client privilege

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**ORDER M-143**  
**APPEAL M-9200159**

Institution: York Region Board of  
Education

JUNE 11, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • public scrutiny  
• health and safety information  
• unjustified invasion of • personal privacy

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**ORDER M-144**  
**APPEAL M-9300015**

Institution: Metropolitan Toronto Board of  
Commissioners of Police

JUNE 11, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • opinions or views  
• evaluation or opinion material

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**ORDER M-145**  
**APPEAL M-9200405**

Institution: The Halton Board of Education

JUNE 11, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • commercial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • competitive  
position • undue loss or gain

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**ORDER M-146**  
**APPEAL M-9200399**

Institution: Township of Michipicoten  
Police

JUNE 15, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record • personal  
information • compiled as part of  
investigation • presumption of  
• unjustified invasion of • another  
individual's personal privacy • law  
enforcement



## ORDER M-147 APPEAL M-9200360

Institution: The Corporation of the Town of  
Whitby

JUNE 17, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

reasonable steps to locate record • law  
enforcement • confidential source

The Town received a request for information relating to complaints received by the Town about the requester's property. The Town identified a number of records which were responsive to the request. The Town granted access to these records in full except for one record which was released with some information withheld pursuant to section 8(1)(d) of the *Act*. The record at issue is a one-page handwritten internal memorandum. The portion of the record which was withheld contained the name of the member of council who received complaints about the appellant's property.

### ORDER

The decision of the Town was upheld.

Assistant Commissioner Glasberg was satisfied that the Town's by-law enforcement process qualified as law enforcement under the *Act*. Further, on the facts of the case, he found that the councillor, although he/she received information from other individuals about the requester, was the actual source of the complaint provided to the Town. Based on the wording of section 8(1)(d), Assistant Commissioner Glasberg accepted that a confidential source of information could include a municipal councillor.

The final step in the analysis was to determine whether the release of the councillor's name would disclose the identity of a confidential source of information. In order to establish that a

source is confidential, a municipality must provide evidence of the circumstances in which the evidence was given. More particularly, the municipality must demonstrate that there was a reasonable expectation of confidentiality associated with the by-law enforcement process. Based principally on the Town's stated policy of protecting the names of complainants in by-law enforcement cases, including members of council, the Assistant Commissioner found that when the councillor provided the information to Town officials, there was a reasonable expectation that the councillor's identity would be kept confidential.

### SECTIONS CONSIDERED

8(1)(d)

### PREVIOUS ORDERS CONSIDERED

M-4

## ORDER M-148 APPEAL M-9200343

Institution: Toronto Board of Education

JUNE 21, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

reasonable steps to locate record

The Board received a request for an audit that looked into the Board's operations. The requester provided the Board with a vendor account number through which the Board allegedly paid the accounting firm which conducted the audit, the name of a Board employee who was allegedly interviewed by a member of the accounting firm and details as to when the audit was performed. The appellant believed that the accounting firm held a duplicate copy of the audit report. The Board responded that the record, if it exists, is not within the Board's custody.

### ORDER

The Board was ordered to conduct a further search for the responsive record

and to notify the appellant by letter as to the results within 15 days of the date of the order.

The *Act* does not require the Board to prove with absolute certainty that the requested record does not exist, however, in order to properly discharge its obligations under section 17(1) of the *Act*, the Board must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request. It appeared from the Board's representations that there was no search conducted to locate the requested records since the Board's position is that the record was never created. The Board's representations did not indicate that a named member or any other person in the accounting firm was consulted during the processing of the appellant's request. In addition, the Board has provided no evidence to enable the Inquiry Officer to conclude that the Board employee who was consulted would have any knowledge of or understanding of the subject matter of the request. Therefore, it was the Inquiry Officer's opinion that the Board had not provided sufficient evidence to enable him to conclude that it had discharged its statutory obligation to conduct a reasonable search for records responsive to the request.

### SECTIONS CONSIDERED

17(1)

### PREVIOUS ORDERS CONSIDERED

59, P-337, P-457, P-458

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**ORDER M-149**  
**APPEAL M-9200388**

Institution: City of Brampton

JUNE 21, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • technical  
• financial • commercial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • similar information • no longer  
supplied • meeting • absence of the public  
• substance of deliberations

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**ORDER M-150\***  
**APPEAL M-9200309**

Institution: The Corporation of the Town of  
Markham

JUNE 24, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

law enforcement • refusal to confirm or  
deny existence of record • interfere with  
law enforcement matter

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**ORDER M-151**  
**APPEAL M-9200166**

Institution: City of Kingston

JUNE 23, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

relations with other governments  
• information received in confidence  
• burden of proof

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**ORDER M-152**  
**APPEAL M-9200372**

Institution: Halton Board of Education

JUNE 25, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

audit reports • custody or control

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**ORDER M-153**  
**APPEAL M-9200019**

Institution: Metropolitan Toronto Police  
Services Board

JUNE 25, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

police records • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy

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**ORDER M-154**  
**APPEAL M-9200184**

Institution: Halton Board of Education

JUNE 28, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • opinions or views

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**ORDER M-155**  
**APPEAL M-9200346**

Institution: Waterloo Regional Police  
Services Board

JUNE 28, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • compiled as part of  
investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • another  
individual's personal privacy

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**ORDER M-156**  
**APPEAL M-9200395**

Institution: Simcoe County Board of  
Education

JUNE 30, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

jurisdiction of Commissioner • time limit  
• appeal • reasonable steps to locate record  
• record retention

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**ORDER M-157**  
**APPEAL M-9300063**

Institution: Metropolitan Licensing  
Commission

JUNE 30, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • compiled as part of  
investigation • relevant to • fair  
determination of rights • presumption of  
• unjustified invasion of • another  
individual's personal privacy • solicitor  
client privilege

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**ORDER M-158**  
**APPEAL M-9300066**

Institution: Metropolitan Licensing  
Commission

JUNE 30, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

solicitor client privilege • personal  
information • compiled as part of  
investigation • relevant to • fair  
determination of rights • employment  
history • highly sensitive • individual's  
reputation • presumption of • unjustified  
invasion of • another individual's personal  
privacy • law enforcement • report

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**ORDER M-159**  
**APPEAL M-9200214**

Institution: Ottawa-Carleton Regional  
Transit Commission

JULY 6, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

jurisdiction of the *Act* • interprovincial  
undertaking • *Canada Labour Code*

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**ORDER M-160**  
**APPEAL M-9200222**

Institution: Ottawa-Carleton Regional  
Transit Commission

JULY 6, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

jurisdiction of the *Act* • interprovincial  
undertaking • *Canada Labour Code*  
• reasonable steps to locate record

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**ORDER M-161**  
**APPEAL M-9200404**

Institution: Durham Region Board of  
Commissioners of Police

JULY 7, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-162**  
**APPEAL M-9300069**

Institution: Town of Gravenhurst

JULY 14, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

solicitor client privilege

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**ORDER M-163**  
**APPEAL M-9300100**

Institution: Halton Board of Education

JULY 16, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • estimate

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**ORDER M-164**  
**APPEALS M-9200413 AND**  
**M-9200414**

Institution: Ottawa-Carleton Regional  
Transit Commission

JULY 20, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-165**  
**APPEAL M-9300134**

Institution: Regional Municipality of Halton  
Police Services Board

JULY 21, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

custody or control

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**ORDER M-166**  
**APPEAL M-9200357**

Institution: Halton Board of Education

JULY 23, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • estimate • interim decision  
• *Education Act* • fee waiver

The Board received a request to examine the expense accounts from 1987 to the date of the request (May 27, 1991) for five named individuals, including actual receipts, invoices, phone bills and other supporting documents. The Board advised that it does not keep statements of expense accounts in the manner requested by the appellant but suggested that it could produce computer printouts for each of the named individuals detailing the date and amount of each cheque made out to them as reimbursement for expenses. The appellant, however, declined to narrow her request and wanted to examine each expense claim and all the supporting documentation submitted by the individuals for the time period specified.

The Board issued an interim decision and a fee estimate. The decision indicated that access would not be given to parts of the record which contained personal information of individuals pursuant to section 14 of the *Act*. The appel-

lant appealed the fee estimate and requested that the Board waive the fee. The Board denied the request. The appellant appealed the decision not to waive the fee.

**ORDER**

The Inquiry Officer upheld the Board's decision not to waive the fee.

The appellant claims that no charges for a fee can be levied under the *Act* in the circumstances of her request because section 207(4) of the *Education Act* make specific provision for the collection of a fee for access to records of the nature of those she has requested.

The appellant claimed that receipts and other documents supporting an expense account qualify as "current accounts".

Receipts, invoices and other documents tendered as evidence of money received or expended would not be included in the term "current accounts", for the purposes of section 207(4) of the *Education Act*. The term "current account" would refer to a statement of debits and credits. This statement would refer to the current fiscal year, and would be distinct from the audited annual financial reports which would refer to past fiscal years. Section 207(4) of the *Education Act* does not provide for a charge or fee for the types of records requested by the appellant. Therefore, the fee provisions of the *Act* apply in the circumstances of the appeal.

The Inquiry Officer then went on to determine whether the Board's decision not to waive a fee was in accordance with the terms of the *Act*.

It would not be fair and equitable to waive the fee in the circumstances of this appeal. In coming to this conclusion, the Inquiry Officer considered the manner in which the Board attempted to respond



to the appellant's request; the fact that the request involves a very large volume of records; that the appellant was not prepared to narrow her request but insisted on receiving raw data which requires extensive searches and time consuming severance procedure; that the appellant has not advanced a compromised solution which would reduce the cost; that the actual cost of producing the record exceeds the fee itself and that waiving of the fee would shift an unreasonable burden of the cost of access from the appellant to the Board, resulting in significant interference with the operations of the Board.

**SECTIONS CONSIDERED**

45(1), 45(4)

**OTHER STATUTES CONSIDERED**

Section 207(4) of the *Education Act*

**PREVIOUS ORDERS CONSIDERED**

P-473

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**ORDER M-167**

**APPEAL M-9200220**

Institution: Waterloo Regional Police Services Board

JULY 28, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • highly sensitive  
• supplied in confidence • individual's reputation • unjustified invasion of  
• another individual's personal privacy

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**ORDER M-168**

**APPEAL M-9200174**

Institution: Township of Mariposa

JULY 28, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • estimate

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**ORDER M-169**

**APPEAL M-9300035**

Institution: City of Toronto

AUGUST 5, 1993

(INQUIRY BIG CANOE)

**KEYWORDS**

third party information • "supplied" • "in confidence" • reasonable expectation of  
• harm • competitive position

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**ORDER M-170**

**APPEAL M-9200332**

Institution: London Police Services Board

AUGUST 6, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

police records • witness statements  
• personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • another individual's personal privacy

The Police received a request for access to reports and statements pertaining to a fire which occurred at a particular time and place in the City of London. The Police notified five individuals named in the records and invited them to submit their views regarding disclosure of the records.

The Police granted partial access to the records but withheld certain parts pursuant to sections 8(1)(l), 8(2)(a) and 38(b) of the *Act*. During mediation, the request was narrowed to four witness statements and the statement of the investigating officer.

On June 30, 1993 while the representations were being considered, the Ontario Court (General Division) (Divisional Court) issued its decision in the case of *John Doe et al. v. Information and Privacy Commissioner et al.* (unreported). This decision interpreted several provisions of the provincial *Act* in a way which differed

from the interpretation developed in orders of the Commissioner. Since similar statutory provisions were also at issue in the present appeal, it was determined that copies of the Divisional Court decision should be provided to the parties along with a statement that the Commissioner's Office planned to follow the interpretation established by the Court. The appellant and the Police were provided with the opportunity to change or to supplement the representations which they had previously submitted.

**ORDER**

The decision of the Police was upheld.

Some portions of the record contained personal information which relates solely to individuals other than the appellant. Other information relates both to the appellant and other identifiable individuals.

**Section 14**

The Commissioner found that the records are not currently maintained in a publicly available form and therefore section 14(1)(c) does not apply. The Commissioner then went on to consider the application of section 14(1)(f) in light of the Divisional Court decision.

The Divisional Court, addressed the question of the inter-relationship between sections 21(2), (3) and (4) of the provincial *Freedom of Information and Protection of Privacy Act*. These provisions are similar to sections 14(2), (3) and (4) of the municipal *Act*. The court found that where personal information falls within one of the presumptions found in the equivalent of section 14(3) of the municipal *Act*, a combination of circumstances set out in section 14(2) of the *Act* which weigh in favour of disclosure cannot collectively operate to rebut the presumption.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the *Act* or where a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption. The Commissioner adopted the court's reasoning for the purposes of the order.

The Commissioner found that the presumption contained in section 14(3)(b) of the *Act* applied and that disclosure of the information would constitute an unjustified invasion of the personal privacy of other individuals. The Commissioner considered section 14(4) of the *Act* and found that none of the personal information at issue falls within this provision. The appellant in this case did not argue that the public interest override set out in section 16 of the *Act* applied. Therefore, the Commissioner found that the information which related solely to other individuals should not be disclosed.

The Commissioner also found that portions of the record which contained the personal information of the appellant and other individuals should not be disclosed pursuant to section 38(b) of the *Act*.

**SECTIONS CONSIDERED**

14, 38(b)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER M-171**  
**APPEAL M-9200319**

Institution: Halton Board of Education

AUGUST 6, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • estimate • *Education Act* • interim decision

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*\* An application for judicial review has been brought in respect of each of the following orders: P-374 & P-494, P-378, P-484, P-496, P-498, M-96 and M-150.*

*The application for judicial review of Order P-352 was dismissed by the Divisional Court. This decision is being appealed to the Ontario Court of Appeal. Leave to appeal by the Ontario Court of Appeal was granted in June 1993.*

*The application for judicial review of Order M-52 has been withdrawn.*

## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	293	323	639
Municipal	275	219	451
Total	568	542	1090

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	379	335	711
Municipal	294	207	411
Total	673	542	1122

METHOD OF CLOSING ACTIVE APPEAL FILES 1993 TO DATE		
	BY ORDER	OTHER THAN BY ORDER
Provincial	107	272
Municipal	89	205
Total	196	477

Numbers are subject to change

\* January 1 - June 30

*\* Please note, the summer 1993 issue of IPC Précis incorrectly noted the time frame for the "method of closing active appeal files". It should have read "1993 TO DATE".*



## COMPLIANCE INVESTIGATIONS

The following highlights are prepared for the purpose of convenience only. For accurate reference, refer to the full-text compliance investigations. Reports released on or after June 1 may be ordered from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8.

### INVESTIGATION I92-65P

Institution: Ministry of Health

MAY 26, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • security

An employee of the Ministry was working under a Memorandum of Agreement between herself and the Ministry. The employee complained that the Ministry distributed copies of the Agreement and medical certificates to the staff of the department at the Psychiatric Hospital where she was assigned to work.

#### CONCLUSION

The IPC found that the Agreement and the medical certificates were disclosed to department supervisors. The Agreement alone was disclosed to the hospital staff. The Ministry submitted that section 42(b) applied because the complainant had verbally consented to the disclosure for educational purposes. The IPC found that the employee had not identified the Agreement and medical certificates "in particular", or consented to their disclosure; thus, section 42(b) of the *Act* did not apply.

The IPC also found that since the employee's union representative had picked up the Agreement and the medical certificates from a desk in the department's main office, the employee's personal information was easily accessible to him or any other individual in the main office

of the department. Therefore, the IPC was of the view that reasonable measures to prevent unauthorized access to the complainant's personal information were not in effect, in accordance with section 4(1) of Ontario Regulation 460.

#### RECOMMENDATION

The IPC recommended that:

1. when the Ministry relies upon an individual's consent, it ensures that the personal information to be disclosed has been identified "in particular" by the individual;

2. the Ministry ensure that all staff and supervisors of the Psychiatric Hospital be reminded of the limited purposes for which the disclosure of personal information is permitted under section 42 of the *Act*;

3. the Ministry ensure that its policies and procedures comply with the requirements of section 4(1) of Ontario Regulation 460.

#### SECTIONS CONSIDERED

2(1), 42, O.Reg.460 s.4(1)

### INVESTIGATION I92-66P

Institution: Ministry of the Solicitor General and Correctional Services

JUNE 11, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

OPP • publicinfo • disclosure

The complainant was stopped by two OPP officers while driving his car on a public highway. He was found in possession of narcotics and was taken into police custody. That same day, one of the arresting officers informed the complainant's supervisor of the arrest and pending charges. "An information" was laid in court twenty three days after the complainant's arrest. The complainant's

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

Ministry of the Attorney General, I93-027P  
Ministry of Community and Social Services, I93-020P  
Ministry of the Environment and Energy, I93-002P  
Ministry of Health, I92-65P, I93-053P  
Ministry of the Solicitor General and Correctional Services, I92-66P, I93-018P  
A Municipality, I93-026M  
A Municipal Board of Education, I93-009M  
A Municipal City, I93-004M  
A Municipal Corporation, I93-017M  
A Municipal Police Force, I93-002M  
A Municipal Transit Authority, I92-77M  
A Regional Police Service, I93-011M  
Workers' Compensation Board, I93-025P

employment was subsequently terminated for behaviour incompatible with his employment.

The complainant believed that the disclosure by the OPP officer of his arrest and pending charges to his employer was not in accordance with the *Act*.

#### CONCLUSION

It was the Ministry's view that section 37 of the *Act* applied since the information disclosed was soon to be made available publicly and thus, the disclosure provisions of Part III of the *Act* were not applicable.

However, it was the IPC's view that at the time of the disclosure, it could not be said that the OPP was maintaining the personal information for the purpose of creating a record available to the public: the charges against the complainant had not yet been laid; documents compelling a court appearance had not been signed; and "an information" had not been laid in court. Therefore, it was the IPC's view that section 37 of the *Act* was not applicable to the personal information disclosed by the OPP and that the disclosure provisions did apply.

The Ministry submitted that the disclosure would have been in accordance with section 42(a) of the *Act* since it would have been in compliance with part II (sections 21(1)(c), 21(1)(f) and 21(2)(b)). The Ministry also submitted that under section 63(1) the disclosure would have been permitted in the absence of an access request under the *Act*.

However, it was the IPC's view that section 42(a) could only be relied upon in the context of an access request. Since section 63(1) did not refer specifically to "personal information", and since one of the purposes of the *Act* is to protect the privacy of individuals, it was the IPC's view that section 63(1) needed to be interpreted narrowly.

With respect to Section 63(1), it was our view that there would have existed a presumed invasion of personal privacy under section 21(3) in part II since the information about the complainant's arrest and charges could be said to have been "compiled and is identifiable as part of an investigation into a possible violation of law". Therefore, notice as required by section 28(1) should have been provided. Since notice had not been provided by the OPP in accordance with section 28(1), the disclosure would not have been in accordance with part II and, thus, would not have been in compliance with section 42(a).

#### RECOMMENDATION

The IPC recommended that the Ministry take steps to ensure that in future, disclosures of personal information by the OPP be made in accordance with the provisions of the *Act*, as interpreted in this investigation.

#### SECTIONS CONSIDERED

2(1), 21(1)(c), 21(1)(f), 21(2)(b), 21(3), 28(1)(b), 42(a), 63(1)

## INVESTIGATION I93-002P

Institution: Ministry of the Environment and Energy

JULY 20, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

corporate

An individual was concerned that the Ministry had disclosed his personal information without his consent, contrary to the *Freedom of Information and Protection of Privacy Act*. According to the complainant, the disclosure occurred when four letters were sent to a lawyer.

#### CONCLUSION

After carefully considering the facts, it was our view that the information contained in the letters at issue did not constitute the complainant's "personal information". These letters contained information relating to the subdivision owned by the complainant's corporation. Accordingly, part III of the *Act* did not apply in the circumstances of this complaint.

#### RECOMMENDATION

We were concerned that the Ministry's correspondence erroneously referred to the complainant (instead of the corporation) as the owner of the subdivision. Therefore, we recommended that the Ministry review its practices and take the necessary precautions to ensure that such errors do not occur in future.

#### SECTIONS CONSIDERED

2(1)

## INVESTIGATION I93-018P

Institution: Ministry of the Solicitor General and Correctional Services

JULY 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • probation

An individual complained that his Probation Officer had disclosed to his ex-wife some information that had been communicated to him during a probation meeting. The individual believed that his Probation Officer had improperly disclosed his personal information.

#### CONCLUSION

The IPC found that the information already discussed by the Probation Officer would have constituted the complainant's personal information, in accordance with paragraph (g) of the definition of personal information, in section 2(1) of the *Act*.

The IPC found no evidence, however, of the Probation Officer having disclosed the information in question to the complainant's former wife.

#### SECTIONS CONSIDERED

2(1), 42

## INVESTIGATION I93-020P

Institution: Ministry of Community and Social Services

JULY 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • grievance • use • video

An individual received an award from the Workers' Compensation Board (WCB), further to an injury she sustained as an employee of one of the Ministry's young offender facilities. Sometime after receiving her award, the individual learned that her manager had disclosed the amount of her award to her co-workers. The individual subsequently filed a grievance.

Soon after filing her grievance, the individual received an apology from her manager. Because the individual was concerned that her manager might breach



her privacy again when she received an expected second award from the WCB, the individual requested the IPC to ensure that her manager and all other employees of the facility receive training in freedom of information and the protection of privacy. The IPC contacted the Ministry in this regard, and it agreed to provide the requested training.

Although the individual received an apology from her manager, the grievance nonetheless proceeded to stage II. The individual believed that during a stage II meeting, the amount of her award had been improperly disclosed to the person designated to decide the grievance.

Unrelated to her WCB award and her subsequent grievance, the individual applied for a vacancy at the facility. Only one other employee had also applied for this vacancy. The complainant was not the successful candidate. Sometime later, the successful candidate prepared a video for the young offenders at the facility. The video included a scene in which the complainant believed that she had been depicted as the unsuccessful candidate in the job competition, which she believed was an improper use of her personal information.

#### CONCLUSION

The IPC found that the amount of the complainant's WCB award was personal information, in accordance with paragraph (b) of the definition of personal information in section 2(1) of the *Act*.

The IPC was unable to determine how the decision-maker at the stage II grievance meeting had come to learn the amount of the WCB award. The IPC determined that had the amount of the award been disclosed to the decision-maker by a Ministry employee in attendance at this meeting, the disclosure would not have been in accordance with section

42(d) of the *Act*, because the decision-maker would not have "needed" to know the value of the award to decide the grievance. The IPC found that none of the remaining exceptions to section 42 would have applied to this disclosure of personal information.

The IPC found that while the complainant had not been identified by name in the video, she was nonetheless "identifiable". The IPC thus found that the video contained the complainant's personal information, in accordance with paragraph (b) of the definition of personal information, in section 2(1) of the *Act*.

The IPC determined that the Ministry's use of this personal information was not in accordance with section 41 of the *Act*. We also learned that the video had been confiscated by the Ministry's legal department, for reasons unrelated to this privacy complaint.

#### RECOMMENDATION

The IPC recommended that the Ministry take steps to ensure that personal information in its custody or under its control be used only in accordance with section 41.

#### SECTIONS CONSIDERED

2(1), 41, 42

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### INVESTIGATION I93-025P

Institution: Workers' Compensation Board

MAY 27, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

WCB • disclosure

An individual complained that the Workers' Compensation Board (the WCB) had disclosed his entire claims file to his employer, without his consent, in contravention of the *Freedom of Information and Protection of Privacy Act*.

#### CONCLUSION

The WCB's Claims Adjudicator acknowledged that one of the complainant's medical records concerning vocational rehabilitation had been sent by mistake with other information to his employer. The WCB, however, maintained that the entire claims file had not been disclosed.

The WCB advised that the medical record had been retrieved from the employer and that the complainant would be receiving a written apology. The WCB gave assurances that this error would not happen again in the future. The complainant was satisfied with the outcome and agreed to withdraw his complaint.

#### SECTIONS CONSIDERED

42

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### INVESTIGATION I93-027P

Institution: Ministry of the Attorney General

JUNE 3, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

FSP/SCOE

The complainant was concerned that he had received in the mail an envelope stamped "Family Support Plan" from a Family Support Plan office of the Ministry. He felt that his registration in the Plan was sensitive personal information.

The Family Support Plan office in question was located on the same floor as several other Ministry offices. The Ministry's position was that the use of the stamp was necessary in order to ensure that any misdirected mail was returned directly to the Family Support Plan office, thus eliminating the need for mail-room staff to open returned envelopes in order to re-direct them to the appropriate office. When a letter was returned, as a part of their enforcement duties, Family



Support Plan staff would investigate further to determine if the mailing address in the system was obsolete.

The IPC suggested a solution that was acceptable to both parties to the investigation, namely, that a new plate for the office stamp machine be ordered bearing the initials "F.S.P." so that in future envelopes would be stamped with these initials rather than "Family Support Plan".

#### SECTIONS CONSIDERED

2(1), 42

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### INVESTIGATION I93-053P

Institution: Ministry of Health

JULY 7, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collection • employee

An individual, who was interviewed for a job, authorized the Ministry to contact four named individuals for references. The Ministry contacted a fifth individual without the complainant's consent.

#### CONCLUSION

The Ministry has assured the IPC that this was an isolated incident and would not occur in the future. The Ministry has advised the employee involved that only individuals listed on the reference form should be contacted in the future.

#### RECOMMENDATION

None

#### SECTIONS CONSIDERED

2(1), 39

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### INVESTIGATION I92-77M

Institution: A Municipal Transit Authority

JULY 14, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

dispose • grievance • labour • nonjuris

A transit authority had reviewed its employee performance files, and destroyed all minor disciplinary entries prior to a particular period of time, further to its collective agreement with the union. An employee of the transit authority questioned whether the transit authority had disposed of these records in accordance with the *Act*.

#### CONCLUSION

The IPC found that the records in question were outside the jurisdiction of the *Act*. In Order M-160, Commissioner Tom Wright noted that as a result of the principle of "interjurisdictional immunity", there were some limits on the application of the *Act* to the transit authority. The Commissioner noted that because the labour relations component of the transit authority was governed by federal law and since grievances were a part of labour relations, a provincial *Act*, such as the *Municipal Freedom of Information and Protection of Privacy Act*, would not apply to records relating to grievances.

In this case, the minor disciplinary entries were disposed of further to the agreement between the transit authority and the union. Since collective agreements clearly relate to labour relations, the IPC concluded that the records in question were outside the jurisdiction of the *Act*.

#### SECTIONS CONSIDERED

None

#### STATUTES CONSIDERED

None

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### INVESTIGATION I93-002M

Institution: A Municipal Police Force

JUNE 14, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • consent

An employee of the Police Force complained that his personal information had been disclosed out of his police file. The complainant and two other auxiliary constables had written a test while on an auxiliary constables course. All three constables were present when each person was advised of their respective test results. According to the Police Force, there were no other disclosures of the test results, although a disclosure may have been made by the other two candidates who were present when the test results were released.

#### CONCLUSION

The IPC determined that since the complainant did not consent to this method of releasing his test results, and since none of the provisions which permit disclosure applied in this case, such a disclosure contravened section 32 of Part II of the *Act*.

#### RECOMMENDATION

None

#### SECTIONS CONSIDERED

2(1), 32

#### STATUTES CONSIDERED

None

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### INVESTIGATION I93-004M

Institution: A Municipal City

JULY 28, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • media

The complainant was a member of the City's fire department. After an incident at a fire scene, a complaint was filed by a member of the public. The City investigated the incident and produced an investigation report which identified the complainant as having been involved in the incident. The media obtained the information in the investigation report



and printed it in a newspaper article. The complainant submitted that the City had disclosed the report, contrary to the *Act*.

#### CONCLUSION

The IPC found that none of the individuals identified as having access to the report, acknowledged disclosing the report or the information it contained to the media. Therefore, the IPC was unable to establish conclusively if the City had in fact made the disclosure.

However, the IPC examined the provisions of section 32 of the *Act* and found that, if the City had disclosed the report to the media, the disclosure would not have been in accordance with section 32.

#### RECOMMENDATION

Although unable to determine if the City had disclosed the report to the media, the IPC recommended that the City take steps to ensure that it clearly communicates to those who have access to the investigation reports, that they must remain confidential, and that any disclosure of personal information be made in accordance with the provisions of the *Act*. The IPC recommended that this should be reflected in the City's procedures for conducting such investigations.

The City responded by clearly indicating its willingness to comply with the recommendation, and proposed a number of changes. The IPC was satisfied with the City's comprehensive response to the recommendation.

#### SECTIONS CONSIDERED

2(1), 32

### INVESTIGATION I93-009M

Institution: A Municipal Board of Education

AUGUST 11, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

arbitrate • collect • dismiss • grievance  
• reference • use • public record

A teacher was assigned to various short-term occasional teaching assignments by the Board over a period of two years. He then applied for a long-term position, and was the successful candidate. While conducting reference checks, the Board's Staffing Superintendent spoke with an employee of another board, who was not one of the teacher's referees. She found that the teacher had been terminated by that board for unsatisfactory performance and that an arbitration decision was available.

As an extension of its reference checking process, the Board obtained a copy of the arbitration decision, which was available to the general public through the Education Relations Commission. Subsequently, the Board terminated the teacher's long-term contract, and removed his name from its occasional teacher list, thereby terminating his employment. The teacher believed that the collection and use of the information in the arbitration decision had breached his privacy.

#### CONCLUSION

The IPC found that the arbitration decision contained the complainant's "personal information", as defined in section 2(1) of the *Act*. Since the Board did not maintain the personal information for the purpose of creating a record available to the general public, the Board could not rely on section 27 of the *Act* to exempt the record of the arbitration decision from the privacy provisions of the *Act*.

The personal information was collected in accordance with section 28(2) of the *Act*, since the collection of reference information was necessary to the proper administration of the Board's lawfully

authorized activity of appoint qualified teachers for its schools.

The personal information was collected indirectly by the Board, in accordance with section 29(1) of the *Act*, since the disclosure by the Education Relations Commission could not contravene the restrictions on disclosure in section 42 of the provincial *Act*.

The Board had not provided proper notice for the collection of the personal information, in accordance with section 29(2) of the *Act*, because its notice did not contain all the elements set out in section 29(2).

Use 1: (terminating the long-term contract) The IPC found that the personal information had been used for the purpose for which it was obtained (the job competition), in accordance with section 31(b) of the *Act*.

Use 2: (removing the teacher's name from the occasional teacher list) Since the personal information was collected indirectly, the IPC's view was that determining whether the personal information had been used for a consistent purpose should be determined by considering whether the use of the personal information was reasonably compatible with the purpose for which it was collected.

The IPC concluded that using the personal information to remove the teacher's name from the occasional teacher list was not reasonably compatible with the purpose for which it was collected. The Board's notice to applicants had stated that the personal information would be used for the purpose of the long-term competition only [emphasis added].

Since the use of the personal information was not reasonably compatible with the



purpose for which it was collected, the personal information was not used in accordance with section 31(b) of the *Act* when it was used to remove the complainant's name from the occasional teacher list.

#### RECOMMENDATION

The IPC recommended that the Board incorporate the following points into its procedures:

1. provide proper notice for collection of personal information for job competitions and reference checks;
2. provide proper notice for collection of personal information from public records;
3. obtain written authorization from candidates to contact referees; and
4. restrict collection of personal information to referees the Board has been authorized to contact.

#### SECTIONS CONSIDERED

2(1), 27, 28(2), 29(1)(2), 31

#### STATUTES CONSIDERED

*Education Act*

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### INVESTIGATION I93-011M

Institution: A Regional Police Service

JULY 21, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • access request

An individual filed a complaint with the Police Service's internal investigation unit which handles public complaints against police personnel. During the investigation of her complaint, the complainant was interviewed by two investigating officers who were aware that she had filed a request with the police for access to information under the *Act*. The complainant stated that this information must

have been disclosed by the two officers, contrary to the *Act*. In addition, the complainant knew that five individuals with the Police had received a copy of her access request. The complainant stated that these five individuals disclosed her personal information to other individuals, either within or outside of the Police, contrary to the *Act*.

#### CONCLUSION

The IPC found that the access request itself had not been disclosed to the investigating officers. The two investigating officers had learned about the complainant's access request after their discussion with her during the interview, and after considering the material she had filed with her complaint to the Police.

The IPC found that the two investigating officers had disclosed the fact that the complainant had filed an access request, but not the details of the request, to their direct Supervisor. The IPC concluded that the disclosure was necessary and proper in the discharge of the Police's function of investigating public complaints against police personnel. The IPC concluded that the Supervisor needed the information in the performance of his duty of ensuring the thorough investigation of these complaints. Therefore, the IPC concluded that the disclosure was in accordance with section 32(d) of the *Act*.

The IPC found that, of the five individuals identified who had received a copy of the complainant's access request, one individual had disclosed it to a Police Inspector. The Inspector had then disclosed it to the person under his supervision, who was one of the five identified. The IPC concluded this disclosure was contrary to the *Act*, since none of the provisions of section 32 applied.

#### RECOMMENDATION

Prior to the IPC's investigation of this matter, the Police implemented changes in the manner in which they processed access requests. Accordingly, the IPC did not find it necessary to make a recommendation regarding this disclosure.

#### SECTIONS CONSIDERED

2(1), 32

#### STATUTES CONSIDERED

*Police Services Act*

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### INVESTIGATION I93-017M

Institution: A Municipal Corporation

JULY 19, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • salary

Employees of the Town were concerned about the potential disclosure of their salaries in a job advertisement. The IPC reviewed a copy of the proposed job advertisement which stated that "The current annual salary for this position is in the \$X range".

#### CONCLUSION

The IPC determined that the information about the annual salary in the advertisement is not "personal information" because it does not relate to an identifiable individual. Therefore, Part II of the *Act* does not apply.

#### SECTIONS CONSIDERED

2(1)

#### STATUTES CONSIDERED

None





## INVESTIGATION I93-026M

Institution: A Municipality

AUGUST 19, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclose • consistent

The complainant, a Home Child Care Provider, was concerned that the Municipality was providing parents with a copy of a bi-weekly Home Child Care Attendance Register form which included her name, address, telephone number, her provider's code number and signature. The complainant was also concerned that there were no policies in place to keep this personal information confidential when it was in the custody of the parents.

### CONCLUSION

1. With respect to the disclosure of the provider's name and signature on the parent's copy of the form, we found that the disclosure of this information was for a consistent purpose and therefore in accordance with section 32(c) of the *Act*. The Municipality had collected the information on the form as a verification of child care services provided and had disclosed the information as a signed receipt for the parents for these same services. The provider might reasonably expect such a disclosure.

2. With respect to the disclosure of the provider's address and telephone number, we found that the initial disclosure of this information was for a consistent purpose in accordance with section 32(c) of the *Act*. The Municipality had collected this information as part of the enrollment process and had disclosed the information so that parents would be able to take their children to the provider's home and contact them as necessary. However, it was our view that once parents had received this information, it did not need to be

subsequently included on the parent's copy of the form, each time that services were provided.

3. With respect to the disclosure of the provider's code number, we did not find this disclosure to be in accordance with the *Act*. The Municipality acknowledged this and informed the IPC that when the form was next printed, the code would no longer appear on the parent's copy. Until that time, providers would be instructed to sever the code number or complete the form in a such a manner that the code did not appear on the parent's copy.

4. With respect to the complainant's concerns about the confidentiality of her personal information when it was in the hands of the parents, the Municipality advised that it would contact both providers and parents to outline its concerns about the inappropriate handling of the form, and to recommend to them, specific steps to be taken to reduce the possibility of subsequent disclosure.

### RECOMMENDATION

We recommended that the Municipality also remove the provider's address and telephone number from the parent's copy, when the form was next reprinted.

### SECTIONS CONSIDERED

32(c), 33

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	56	42	73
Municipal	30	50	94
Non-Jur	5	0	0
Total	91	92	167

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	55	53	104
Municipal	48	49	98
Non-Jur	5	0	0
Total	108	102	202

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1993 TO DATE		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	8	12
Retention	0	2
Use	1	3
Disclosure	41	28
Access	0	1
Correction	2	0
Notice	1	0
P.I. Bank	0	2
Security	1	0

\*Excludes cancelled investigations.

Numbers are subject to change

\* January 1 - June 30

### IPC PRÉCIS

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# IPC PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## ORDERS

All IPC orders are highlighted briefly below. Selected orders include textual summaries. This information is provided for convenience only. For accurate reference, refer to the full-text orders available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8; fax (416)326-5317.

### ORDER P-514

#### APPEAL P-9200774

Institution: Ministry of Consumer and Commercial Relations

AUGUST 12, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

advice to government • cabinet records  
• substance of deliberations • consultation  
among ministers

### ORDER P-515

#### APPEAL P-9200411

Institution: Ministry of Health

AUGUST 12, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

personal information • opinions or views  
• relevant to • fair determination of rights  
• pecuniary harm • inaccurate  
information • individual's reputation  
• unjustified invasion of • another  
individual's personal privacy

## AT A GLANCE

### ORDERS issued between August 7, 1993 and October 15, 1993.

Boards of Education Hamilton M-190, M-191 Leeds and Grenville, M-184	Ministry of Health, P-515, P-518, P-523, P-524, P-533, P-537, P-544, P-549, P-550, P-551
Cities Brant, M-176 Kingston, M-196 Mississauga, M-179 North York, M-180 Ottawa, M-173 Toronto, M-172, M-182, M-192, M-195 Vaughan, M-181	Ministry of Housing, P-535, P-536 Ministry of Municipal Affairs, P-516 Ministry of Natural Resources, P-545 Ministry of the Solicitor General and Correctional Services, P-519, P-521, P-547 Ministry of Transportation, P-529 Municipality of Metropolitan Toronto, M-177, M-185, M-186, M-187, M-188, M-189, M-200
Humber College of Applied Arts and Technology, P-552	Ontario Securities Commission, P-548
Management Board Secretariat, P-527, P-530	Ontario Hydro, P-520, P-531
Metro Licensing Commission, M-194	Regional Police Service Boards Hamilton/Wentworth, M-174
Ministry of the Attorney General, P-525, P-528, P-534, P-539, P-541, P-546	Metropolitan Toronto, M-178, M-198, M-199, M-202
Ministry of Community and Social Services, P-540	Waterloo, M-193
Ministry of Consumer and Commercial Relations, P-514, P-532	Regional Municipality of OttawaCarleton, M-175
Ministry of the Environment and Energy, P-517, P-526	Townships of Ignace, M-201 of Mayborough, M-197
Ministry of Finance, P-522, P-538, P-542, P-543	Village of Morrisburg, M-183

### ORDER P-516

#### APPEAL P-9200741

Institution: Ministry of Municipal Affairs

AUGUST 17, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

petitions • *Municipal Act* • personal  
information • pecuniary or other harm  
• supplied in confidence • public scrutiny  
• unjustified invasion of • personal privacy

A request was made for access to a copy of a petition submitted to the Ministry under section 178 of the *Municipal Act* requesting an inquiry into the administration of Arthur Township (the Township).

#### ORDER

The Ministry was ordered to disclose the record.



The record at issue was a petition submitted to the Minister of Municipal Affairs under the provisions of section 178 of the *Municipal Act* which provides that "the Lieutenant Governor in Council, upon the recommendation of the Minister, may issue a commission to inquire into any of the affairs of any municipality ...". The section further provides that a commission may be recommended "... upon the request in writing ... of not less than fifty electors of the municipality."

Inquiry Officer Seife was of the view that although not listed under section 21(2), the public nature of the record at issue was a relevant consideration in the circumstances of this appeal and that this unlisted factor favoured the disclosure of the record.

Inquiry Officer Seife referred to Order 171, in which former Inquiry Officer McCamus stated:

*Petitions by their very nature, are not documents that have an aura of confidentiality. The signatories to a petition do so voluntarily. By including their name on a petition, a signatory takes a public stand with respect to the issue being petitioned for. Petitioners are aware that they are revealing personal information about themselves when they add their names to a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause which is the subject of the petition.*

*Further, petitions are usually collected in a fairly public manner. Proponents of a petition often seek additional signatories in shopping malls, in front of public buildings or in door to door campaigns. Individuals are approached to add their names to the petition and are given the opportunity to read the body of the petition. Upon doing*

*so, the individual, who may or may not eventually become a signatory, will have the opportunity to see the names, addresses and signatures of those who have already lent their support to the petition.*

Inquiry Officer Seife found that while there may be cases where, due to the sensitivity of their content, petitions may be circulated in secrecy and supplied to an institution in confidence, this was not the case in the circumstances of this appeal. The individuals who signed the petition were exercising their right under the *Municipal Act* to request the appointment of a commission of inquiry, a public process governed by the *Public Inquiries Act*. Under these circumstances, it was not reasonable to expect that the petitioners' identities would be kept confidential.

#### SECTION CONSIDERED

2(1), 21

#### OTHER STATUTES CONSIDERED

Section 178 of the *Municipal Act*

#### PREVIOUS ORDERS CONSIDERED

171, 172

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### ORDER P-517

#### APPEALS P-9300364, P-9300365 AND P-9300366

Institution: Ministry of the Environment  
and Energy

AUGUST 20, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

time extension • responding to request for  
access

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### ORDER P-518

#### APPEAL P-9300179

Institution: Ministry of Health

AUGUST 20, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • unjustified invasion  
of • personal privacy

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### ORDER P-519

#### APPEAL P-9200762

Institution: Ministry of Solicitor General  
and Correctional Services

AUGUST 25, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

personal information • compiled as part  
of investigation • medical, psychiatric or  
patient records • presumption of  
• unjustified invasion of • personal privacy

---

### ORDER P-520

#### APPEAL P-9300088

Institution: Ontario Hydro

AUGUST 25, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

third party information • tender or bid  
• financial • commercial • "supplied"  
• "in confidence" • economic or other  
interests

---

### ORDER P-521

#### APPEAL P-9300199

Institution: Ministry of the Solicitor General  
and Correctional Services

AUGUST 25, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • deceased persons

---

**ORDER P-522**  
**APPEAL P-9300161**

Institution: Ministry of Finance

AUGUST 25, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

advice to government • third party  
information • commercial • "supplied"  
• "in confidence" • reasonable expectation  
of • harm • similar information • no  
longer supplied • law enforcement  
• interfere with law enforcement

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**ORDER P-523**  
**APPEAL P-9300164**

Institution: Ministry of Health

AUGUST 26, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • name • address  
• unjustified invasion of • personal privacy

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**ORDER P-524**  
**APPEAL P-9300147**

Institution: Ministry of Health

AUGUST 27, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record • personal  
information • highly sensitive • supplied in  
confidence • unjustified invasion of  
• another individual's personal privacy

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**ORDER P-525**  
**APPEAL P-9200634**

Institution: Ministry of the Attorney General

AUGUST 30, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • compiled as part of  
investigation • presumption of  
• unjustified invasion of • another  
individual's personal privacy

---

**ORDER P-526**  
**APPEAL P-9200729**

Institution: Ministry of Environment and  
Energy

AUGUST 30, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER P-527\***  
**APPEAL P-9300052**

Institution: Management Board Secretariat

SEPTEMBER 2, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • highly sensitive  
• supplied in confidence • unjustified  
invasion of • another individual's personal  
privacy

A request was made for access to "the  
names of the persons [who filed the  
complaints], and the dates of these men-  
tioned complaints, also the complaint  
and the date of such incident."

**ORDER**

The Secretariat was ordered to disclose  
the records at issue with some severances.

Inquiry Officer Seife found that when an  
allegation of sexual harassment is made  
and investigated, it is reasonable for the  
parties involved to find the experience  
distressing and to restrict discussion of  
the subject with others. However, this  
would not be the case as between the  
complainant and the respondent (in this  
case the affected persons and the appel-  
lant). Owing to the nature of the com-  
plaint of sexual harassment itself, it is  
neither possible nor practical for the in-  
vestigation of the complaint to proceed  
in circumstances where the identity of  
the complainant and the substance of  
the complaint are withheld from the  
respondent.

Once a formal complaint of sexual har-  
assment has been filed and a decision is  
made to investigate the complaint, con-  
fidentiality of information received dur-  
ing this process must be maintained to  
protect the personal privacy of the indi-  
vidual's involved; however, this protec-  
tion does not extend to withholding  
from the respondent such vital  
information as the identity of the com-  
plainant and the substance of the com-  
plaint. Given the nature of the complaint  
of sexual harassment, it is not reasonable  
for the complainants to expect that such  
information would not be disclosed to  
the respondent, nor is it possible or even  
practical for the investigating institution  
to guarantee that the information would  
not be disclosed to the very person whose  
response to the complaint is being sought.

Section 49(b) allows the withholding of  
personal information that relates to the  
appellant only when its disclosure would  
constitute an "unjustified invasion of  
another individual's personal privacy."  
(emphasis added)

**SECTIONS CONSIDERED**

2(1), 21(2)(f), 21(2)(h), 49(b)

**PREVIOUS ORDERS**

182, M-82

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**ORDER P-528**  
**APPEAL P-9300170**

Institution: Ministry of the Attorney General

SEPTEMBER 2, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • financial  
• "supplied" • "in confidence" reasonable  
expectation of • harm • similar  
information no longer supplied  
• unjustified invasion of personal privacy  
• public information

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**ORDER P-529**  
**APPEALS P-910274 AND**  
**P-910779**

Institution: Ministry of Transportation

SEPTEMBER 3, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

cabinet records • advice to government  
• solicitor client privilege • third party  
information • "supplied" • "in confidence"  
• economic or other interests

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**ORDER P-530**  
**APPEAL P-9200723**

Institution: Management Board Secretariat

SEPTEMBER 3, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • fee waiver • estimate

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**ORDER P-531**  
**APPEAL P-9200590**

Institution: Ontario Hydro

SEPTEMBER 3, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • commercial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • competitive  
position

---

**ORDER P-532**  
**APPEAL P-910632**

Institution: Ministry of Consumer and  
Commercial Relations

SEPTEMBER 9, 1993

(COMMISSIONER WRIGHT)

**KEYWORDS**

personal information • identifiable  
individual • economic or other interests of  
• third party information • financial  
• reasonable expectation of • harm  
• competitive position • similar  
information no longer supplied • undue  
loss or gain • public interest override

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**ORDER P-533**  
**APPEALS P-9300203, P-9300204**  
**AND P-9300207**

Institution: Ministry of Health

SEPTEMBER 10, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

agent • right to counsel or agent in appeal  
• appeal

Four requests were received from an agent who purported to act on behalf of four individuals who are patients in a psychiatric institution. The agent is a patient at the same facility. These requests seek personal information respecting the four patients compiled while these individuals were residents in the institution. The requests were very broad in nature, covering periods from eight to 17 years and encompassing records located in many program areas.

The four patients each provided the Ministry with a letter of authorization granting the agent the authority to make the request and to proceed with any appeal to the Commissioner's office which might result from the request.

For three of the requests, the Ministry wrote directly to the patients and indicated that, owing to concerns about patient confidentiality, it was not prepared to honour these authorizations. The Ministry then asked the patients to verify in writing that they wished to proceed with their requests on the basis that any information located would be released to

them directly. No responses were received from the patients with the result that the Ministry declined to further process these requests.

For the fourth request, the Ministry processed the file and then issued a decision letter in which it advised the patient that it would not honour the authorization. In the same correspondence, the Ministry offered to provide the responsive records to the patient directly. In a subsequent telephone call, however, the agent advised the Ministry that the patient would only accept delivery of the decision letter through the agent and that any documentation otherwise received would be returned.

The sole issue for determination in these appeals was whether the Ministry acted reasonably in refusing to accept the authorizations purportedly granted by the patients to have the appellant act as their agent.

**ORDER**

It was held that the Ministry acted reasonably in refusing to accept the authorizations purportedly granted by the patients to the agent.

The Ministry was also ordered to make all reasonable efforts to contact the patients whose personal information was the subject of three of the appeals. Regarding the fourth appeal, the Ministry was ordered to advise this patient of the contents of this order and to advise the patient that the Ministry remains willing to provide the personal information in question directly to the patient.

In arriving at his decision, the Assistant Commissioner considered section 52(14) of the *Act* and section 3(3) of Regulation 460 made under the *Act*. Section 52(14) reads as follows:



*The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.*

Section 3(3) of Regulation 460 states that:

*The head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it.*

The Assistant Commissioner noted that the purpose of section 52(14) is to allow persons to rely on the expertise of counsel or agents to obtain information under the provisions of the *Act*. Where an access request involves general records, there is no need for an institution to make inquiries respecting the sufficiency of any authorizations which it may have received. Where, however, the subject matter of the request involves personal information of a principal, and an institution has a concern that the agent who has made such a request lacks the requisite authority to do so, the institution has the obligation to make whatever inquiries it considers reasonable to satisfy itself that the authorization is proper.

In determining whether the Ministry acted reasonably in refusing to accept the authorizations provided by the patients, the Assistant Commissioner placed particular weight on the following considerations. First, the personal information being sought was very sensitive in nature and was compiled over extended periods of time. Second, the clauses in the agreement which purported to prevent the Ministry from making direct contact with the patients effectively precluded the Ministry from complying with its obligations under section 3(3) of Regulation 460. Third, the fact that no response to the Ministry's correspondence was received from three of the patients in-

volved in these appeals was also a source of concern.

Finally, the records at issue in these appeals were being sought from areas of an institution responsible for the care and treatment of particularly vulnerable individuals. In these cases, institutions must take special care to ensure that authorizations are provided in a free and voluntary manner.

Taking all of these considerations into account, The Assistant Commissioner found that the Ministry acted reasonably in refusing to accept the authorizations purportedly granted by the patients to the agent. He pointed out, however, that the approach which the Ministry applied to assess the validity of the authorizations was flawed. Rather than taking a priori position that the authorizations provided by the patients were invalid, Ministry officials ought to have discussed this subject with the patients involved before determining whether or not to accept the authorizations. That approach should be adopted should subsequent requests of this nature be received.

For the purposes of the present appeals, it was clear that the Ministry had experienced considerable difficulty in discerning, in a direct and reliable fashion, the actual views of the patients with respect to the processing of their requests. For this reason, the Assistant Commissioner was of the view that it would be prudent for any further transactions pertaining to these requests to occur between the Ministry and the patients directly. The patients would then be free to share the information which they received with whomever they chose.

#### SECTIONS CONSIDERED

52(14), 3(3) of Regulation 460

#### PREVIOUS ORDERS CONSIDERED

P-455, M-71

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### ORDER P-534\*

#### APPEAL P-9200506

Institution: Ministry of the Attorney General  
SEPTEMBER 10, 1993  
(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

law enforcement • reasonable expectation of harm

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### ORDER P-535

#### APPEAL P-9200690

Institution: Ministry of Housing  
SEPTEMBER 20, 1993  
(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

access procedure • reasonable steps to locate record

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### ORDER P-536

#### APPEALS P-9200609

Institution: Ministry of Housing  
SEPTEMBER 20, 1993  
(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

employment information • access procedure • reasonable steps to locate a record

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### ORDER P-537

#### APPEALS P-9300053

Institution: Ministry of Health  
SEPTEMBER 20, 1993  
(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

access procedure • content of decision letter • notice of refusal • application of the *Act* • record generated during mediation

## ORDER P-538 APPEAL P-9200445

Institution: Ministry of Finance

SEPTEMBER 21, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

solicitor client privilege • crown counsel  
• in contemplation of or for use in  
litigation • personal information  
• presumption of • unjustified invasion of  
• personal privacy

## ORDER P-539 APPEAL P-9200246

Institution: Ministry of the Attorney General

SEPTEMBER 24, 1993

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

personal information • address • name  
• unjustified invasion of • personal privacy

## ORDER P-540 APPEAL P-9200830

Institution: Ministry of Community and  
Social Services

SEPTEMBER 24, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

access procedure • method of access  
• personal information • *Ontario Human  
Rights Act*

A request was made for access to two copies of the requester's vocational rehabilitation file for the period from November 22, 1982 to November 6, 1992. The requester, who is visually impaired, asked that one copy be sent to him in regular format and that the other be provided in 24 point type (enlarged) bold print.

The Ministry provided the requester with a copy of his file in regular print, but refused to supply him with a second copy

in an enlarged format. In its decision letter, the Ministry submitted that sections 30(1) and (3) of the *Act* governed the extent of its statutory obligations in this case. These sections essentially provide that a requester is to be given access to a copy of the record to which he or she is entitled, unless it would not be reasonably practicable to reproduce the record by reason of its length or nature.

### ORDER

The Ministry's decision was upheld.

In Order 19, former Commissioner Sidney B. Linden considered the meaning of section 48(4). In that order he stated:

*I agree that subsection 48(4) of the Act does place a duty on the head to "ensure that the personal information is provided to the individual in a comprehensible form". Clearly, the subsection creates a duty to ensure that the average person can comprehend the record. For example, a computer-coded record would be incomprehensible to the average person if provided without the key which will 'unlock' it.*

*But, does subsection 48(4) create a further duty on the head to assess a specific requester's ability to comprehend a particular record? With respect, I do not think that it does.*

The Assistant Commissioner agreed with Commissioner Linden that, based on the scheme of the *Act*, the term "comprehensible" must be interpreted according to an objective standard.

Section 11(1)(a) of the *Ontario Human Rights Code* (the *Code*) prescribes that:

*A right of a person under Part 1 [in which section 1 is found] is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion,*

*restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,*

*(a) the requirement, qualification, or factor is reasonable and bona fide in the circumstances;*

The Assistant Commissioner found that the Commissioner's Office has an obligation to interpret section 48(4) of the *Act* according to the principles set out in section 11(1)(a) of the *Code*.

It was held that had the Ministry interpreted section 48(4) of the *Act* based on an objective standard and applied the provision in this fashion without any effort to assist the requester, there would have arisen a restriction of the appellant's rights as a handicapped person pursuant to section 11(1)(a) of the *Code*, and there would have existed a prima facie breach of the provisions of the *Code*.

However, the Assistant Commissioner found that the Ministry recognized the appellant's special needs and that the steps that the Ministry took to assist the appellant to comprehend his file allowed the appellant to effectively access his personal information. As a result, the Ministry's decision not to transcribe the appellant's entire file into 24 point type bold print does not represent a contravention of section 11(1)(a) of the *Code*.

In a postscript to the order, the Assistant Commissioner indicated that the task of defining the rights of visually impaired individuals to obtain access to their personal information is a difficult one in the absence of clear statutory direction. Although not raised in the present appeal, the same comment would apply to requests from these individuals for access to general records.



The Assistant Commissioner then noted that these subjects have been addressed legislatively under the federal access and privacy schemes under section 12(3) of the *Access to Information Act* and section 17(3) of the *Privacy Act*, respectively. In the same light, the Assistant Commissioner indicated that there is a need for the Government of Ontario to clearly establish the obligations of institutions when responding to access requests filed by visually impaired requesters. While such direction should, ideally, be provided within the provincial and municipal *Acts*, themselves, the promulgation of a Management Board Guideline would represent a useful first step.

#### SECTIONS CONSIDERED

30, 48

#### OTHER STATUTES CONSIDERED

Sections, 1, 11(1)(a) and 11(2) of the *Ontario Human Rights Code*

#### PREVIOUS ORDERS CONSIDERED

19

### ORDER P-541

#### APPEAL P-9300198

Institution: Ministry of the Attorney General

SEPTEMBER 28, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

witness statements • report • investigation  
• personal privacy • personal information  
• consent to access to • personal  
information • presumption of • unjustified  
invasion of • another individual's personal  
privacy • advice to government • public  
interest override • burden of proof

A request was made for access to information relating to an investigation of an allegation of sexual harassment against the requester.

#### ORDER

The Ministry's decision was partially upheld.

In its representations, the Ministry indicated that it was exercising its discretion to withhold certain parts of the records pursuant to section 13(1) of the *Act* under section 49(a). The Ministry also indicated that it had disclosed to the appellant the six words in the investigation report that it had initially withheld from disclosure.

The three records remaining at issue and the exemptions claimed by the Ministry for each may be described as two memoranda for which sections 13(1) and 49(a) were claimed and only partial access was granted. Access to the witness statements were denied in full pursuant to section 49(b).

Section 23 is not referred to in section 49(b). However, where an institution has properly exercised its discretion under section 49(b) of the *Act*, relying on the application of sections 21(2) and/or (3), an appellant should be able to raise the application of section 23 in the same manner as an individual who is applying for access to the personal information of another individual in which the personal information is considered under section 21.

The same approach should be taken in cases in which an institution has properly exercised its discretion under section 49(a) where the sections of the *Act* enumerated therein, which also appear in section 23 namely 13, 15, 17, 18 and 20, would apply to the disclosure of the personal information.

#### SECTIONS CONSIDERED

2(1), 13(1), 23 49(a), 49(b)

#### PREVIOUS ORDERS CONSIDERED

24, P-233

### ORDER P-542

#### APPEAL P-9300114

Institution: Ministry of Finance

SEPTEMBER 28, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

law enforcement • interfere with law  
enforcement • refusal to confirm or deny  
existence of record • personal information

A request was received for access to records held by the Ministry of Finance or the Pension Commission of Ontario (PCO), an agency of the Ministry, relating to investigations of Standard Trustco Limited Designated Employees' Retirement Plan (the Plan). The Ministry refused to confirm or deny the existence of such records pursuant to section 14(3) of the *Act*. The Ministry indicated that if records of the nature requested existed, they would be exempt under sections 14(1)(a), (b).

#### ORDER

The Ministry's decision to refuse to confirm or deny the existence of records was not upheld. The Ministry's decision not to disclose the records was upheld.

In an appeal from a decision to refuse to confirm or deny the existence of a record, the correctness of the decision is an issue to be determined on appeal (Order M-46). In this appeal, a conclusion was reached that section 14(3) of the *Act* was not applicable and this was stated at the outset. Inquiry Officer Seife confirmed that records existed which were responsive to the appellant's request.

The records which were identified by the Ministry as being responsive to the request were: 1. A memorandum from an investigator in the Ministry's Investigations Branch to the Deputy Director of the Branch; 2. A memorandum from a Plan and Investment Auditor of the PCO



to Senior Legal Counsel of the PCO; and 3. Handwritten notes of Legal Counsel of the PCO.

The Ministry submitted that sections 14(1)(a), (b), (c), (d) and (g), and 14(2)(a) and (c) of the *Act* applied to the records.

Inquiry Officer Seife was satisfied that the matter to which the records at issue related was a law enforcement matter, as the term is defined in section 2 of the *Act*.

It was also held that the Ministry had provided sufficient evidence to establish that the disclosure of the records could reasonably be expected to interfere with a law enforcement matter or investigation under sections 14(1)(a) and (b) and that all of the records qualified for exemption under these sections.

After explaining the evolution that took place with respect to the interpretation of section 14 (3) in various orders, Inquiry Officer Seife went on to establish the following test:

*An institution relying on section 14(3) of the Act must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 14(1) or (2). The institution must establish that disclosure of the mere existence or non existence of such a record would communicate to the requester information that would fall under either section 14(1) or (2) of the Act.*

The Ministry submitted that if section 14(3) cannot be relied upon, it would be required to provide the appellant with a general description of each record, and to do so "could seriously jeopardize the investigation..."

The Ministry's concerns related to harms that could occur as a result of the disclosure of the records themselves, rather

than the disclosure of their mere existence. The *Act* does not require the Ministry to provide a description of a record which would reveal exempt information; rather, the records may be described in a general manner with sufficient information to allow the requester to have some knowledge of the nature of the record so that the requester can make an informed decision on whether or not to appeal the decision of the institution to the Information and Privacy Commissioner.

#### SECTIONS CONSIDERED

2(1), 14(1), 14(2), 14(3), 49(a)

#### OTHER STATUTES CONSIDERED

Section 106, 109, and 110 of the *Pension Benefits Act*

#### PREVIOUS ORDERS CONSIDERED

102, 106, 148, 170, P-255, P-262, P-338, P-423, M-46

### ORDER P-543

#### APPEAL P-9200705

Institution: Ministry of Finance

SEPTEMBER 28, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

law enforcement • interfere with law enforcement • refusal to confirm or deny existence of record • personal information

### ORDER P-544

#### APPEAL P-9300251

Institution: Ministry of Health

SEPTEMBER 30, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

fees • estimate

### ORDER P-545\*

#### APPEAL P-9300051

Institution: Ministry of Natural Resources

SEPTEMBER 30, 1993

(INQUIRY OFFICER HALE)

#### KEYWORDS

third party information • scientific  
• technical • supplied • in confidence  
• reasonable expectation of • harm

### ORDER P-546

#### APPEAL P-9300274

Institution: Ministry of the Attorney General

OCTOBER 6, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

solicitor client privilege • crown counsel  
• in contemplation of or for use • in litigation

### ORDER P-547

#### APPEAL P-9200695

Institution: Ministry of the Solicitor General and Correctional Services

OCTOBER 5, 1993

(INQUIRY OFFICER HALE)

#### KEYWORDS

content of decision letter • law enforcement • interfere with law enforcement • *Criminal Code of Canada*  
• advice to government • personal information • highly sensitive  
• individual's reputation • presumption of  
• unjustified invasion of • personal privacy

### ORDER P-548

#### APPEAL P-9300018

Institution: Ontario Securities Commission

OCTOBER 7, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

personal information • law enforcement  
• agency • report • investigation • interfere with law enforcement • presumption of  
• unjustified invasion of • another individual's personal privacy



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## ORDER P-549 APPEALS P-9200748 AND P-9300108

Institution: Ministry of Health

OCTOBER 13, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

discretionary exemption • third party information • labour relations • personal information • personal privacy • unjustified invasion of • another individual's personal privacy

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## ORDER P-550 APPEAL P-9200603

Institution: Ministry of Health

OCTOBER 13, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

solicitor client privilege • personal information • relevant to • fair determination of rights • supplied in confidence • personal privacy • unjustified invasion of • another individual's personal privacy • record • reasonable steps to locate record

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## ORDER P-551 APPEALS P-9300063 AND P-9300109

Institution: Ministry of Health

OCTOBER 13, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

solicitor client privilege • advice to government • personal information • supplied in confidence • personal privacy • unjustified invasion of • another individual's personal privacy

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## ORDER P-552 APPEAL P-9200700

Institution: Humber College of Applied Arts and Technology

OCTOBER 13, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

personal information • compiled as part of investigation • highly sensitive • supplied in confidence • presumption of • unjustified invasion of • another individual's personal privacy

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## ORDER P-553 APPEAL P-9200755

Institution: Ministry of Finance

OCTOBER 14, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

record does not exist • notice • by head • of refusal • third party information • *Tobacco Tax Act* • tax information

A request was made for information on (1) the number of companies, firms or individuals that have given some form of security for payment of tobacco tax, (2) the dollar amount of any such security given and (3) the number of companies, firms or individuals which pay tax on the basis of tobacco sales rather than purchases.

In its decision letter, the Ministry responded that no records exist with respect to parts 1 and 3 of the request. With respect to part 2 of the request, the Ministry denied access to the information based on the exemption contained in section 17(2) of the *Act*.

### ORDER

The Ministry's decision not to disclose the letters of credit was upheld.

The Assistant Commissioner also indicated, however, that in processing the request, the Ministry had failed to comply with its obligations under sections 24 and 29(1)(b)(ii) of the *Act*.

Order 50 addresses the obligations of institutions when processing access requests where the raw data exists which would respond to the request but no record exists in the exact format requested. That order states as follows:

*... [W]hen an institution receives a request for information which exists in some recorded format within the institution, but not in the format asked for by the requester, what duty is imposed on the institution?*

...

*In cases where a request is for information that currently exists, either in whole or in part, in a recorded format different from the format asked for by the requester, in my view, section 24 of the Act imposes a responsibility on the institution to identify and advise the requester of the existence of these related records. It is then up to the requester to decide whether or not to obtain these related records and sort through and organize the information into the originally desired format . . .*

The *Act* requires the institution to provide the requester with access to all relevant records, however, in most cases, the *Act* does not go further and require an institution to conduct searches through existing records, collecting information which responds to a request, and then creating an entirely new record in the requested format. In other words, the *Act* gives requesters a right (subject to the exemptions contained in the *Act*) to the "raw material" which would answer all or part of a request, but, . . . the institution is not required to organize this information into a particular format before disclosing it to the requester.

The Assistant Commissioner concluded that the "raw material" to answer the appellant's request was, for the most part, available.

By virtue of section 24 of the *Act*, therefore the Ministry had an obligation to advise the appellant that the information which she was seeking was contained in the records responsive to part 2 of the request. On this basis, the Ministry was incorrect in advising the appellant that records which responded to the first and third parts of her request did not exist.

A number of previous orders issued by the Commissioner's office have commented on the degree of particularity which should be contained in a decision letter issued by an institution. The general purport of these orders was neatly summarized in Order P-537 as follows:

*In providing a notice of refusal under section 29, the extent to which an institution describes a record in its decision letter will have an impact on the amount of detail required under section 29(1)(b)(ii). For example, should an institution merely describe a record as a "memo", more detailed reasons for denying access would be required than if a more expansive description of the record had been provided. Whichever approach is taken, the key requirement is that the requester must be put in a position to make a reasonably informed decision on whether to seek a review of the head's decision (Orders 158, P-235 and P-324).*

The Assistant Commissioner concluded that, in this case, the Ministry had failed to provide any description whatsoever of the records that were responsive to one part of the request. The result was that the requester was effectively precluded from making a reasonably informed decision on whether to seek a review of the Ministry's decision. On this basis, the Assistant Commissioner concluded that

the Ministry had failed to comply with section 29(1)(b) of the *Act*, with respect to the appellant's request.

The Assistant Commissioner was then required to determine how the appellant should be provided with a general description of the records. One option he considered involved remitting the case back to the Ministry so that a proper decision letter could be issued.

The Assistant Commissioner considered, however, that such an outcome would create further delay and not serve the best interests of the appellant.

Under section 54(1) of the *Act*, the Commissioner, or his delegate, has the authority, once all the evidence for an inquiry has been received, to make an order disposing of all the issues raised by the appeal. Pursuant to this authority, the Assistant Commissioner determined that the fairest approach would be for him to generally describe the records responsive to one part of the request in a way that satisfies the minimum disclosure requirements contemplated under section 29(1)(b) of the *Act*. That description was set out in the order.

The Assistant Commissioner then turned to the consideration of section 17(2) of the *Act*. This provision indicates that an institution shall refuse to disclose a record that reveals information that was gathered for the purpose of collecting a tax.

The Assistant Commissioner found that the release of the letters of credit would reveal information which was gathered to enable the Ministry to ultimately collect a tax and that the two letters of credit and the renewal document were exempt from disclosure under section 17(2) of the *Act*.

#### SECTIONS CONSIDERED

17(2), 24, 29

#### OTHER STATUTES CONSIDERED

Section 12 of the *Tobacco Act*

#### PREVIOUS ORDERS CONSIDERED

158, P-298, P-324, P-482

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### ORDER M-172

#### APPEAL M-9200249

Institution: City of Toronto

AUGUST 10, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

interim decision • fees estimate

- reasonable effort to identify record
- reasonable steps to locate record

The appellant requested access to particulars surrounding a fire which occurred in the requester's residence, prior to her moving in March 1989.

#### ORDER

The City's search for responsive records was reasonable in the circumstances.

During the processing of the appeal, it became clear that the City had not determined whether any records responsive to the request existed in its custody or control. It indicated that even if the appellant were to pay the fees, there was no guarantee that any records would be located.

It was determined that, before dealing with the fee estimate, it would be necessary to resolve the issue of whether the City has conducted a reasonable search to identify a record that would be responsive to the appellant's request.

Upon receipt of a request, the City must first be satisfied pursuant to section 17(1) of the *Act*, that the request is sufficiently clear that "an experienced employee of the institution, upon a reasonable effort, [could] identify the record." If the request is not sufficiently clear, the City is



required by section 17(2) to offer the requester assistance in reformulating the request so as to comply with section 17(1). In this appeal, both the City and the appellant have attempted to clarify the request, however, the appellant was not able to provide the City with a specific date of the fire, which is the critical information required to locate the record, given the City's current record keeping system.

Inquiry Officer Seife noted that it is not appropriate for the City to issue a fee estimate for locating a record in circumstances where it cannot reasonably expect to identify a responsive record. The decision maker who issues the order in these circumstances has the responsibility to ensure that the City has made a reasonable effort to identify the record, as required under section 17(1).

#### SECTIONS CONSIDERED

17(1), 17(2)

#### PREVIOUS ORDERS CONSIDERED

None

### ORDER M-173 APPEAL M-9200156

Institution: City of Ottawa

AUGUST 11, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

retirement agreement • personal information • employment • benefits • employment history • financial history • supplied in confidence • pecuniary harm • highly sensitive • individual's reputation • public scrutiny • public confidence • presumption of • unjustified invasion of • personal privacy • solicitor client privilege • in contemplation of or for use • in giving legal advice • in litigation • public interest override

The City of Ottawa received a request for the dollar value of severance benefits

offered/provided to three commissioner-level city employees who took early retirement.

The requester subsequently clarified his request and indicated that he was seeking access to "records that document the financial and/or benefit package offered or provided to three commissioner-level city employees" as well as "any non-monetary severance provisions contained in the package that may have value."

The City provided the requester with copies of the minutes of the Council meeting which considered the access request, as well as the salary ranges and employment benefits package for the City's executive group. The City, however, denied access to the three early retirement agreements entered into between the City with each former employee pursuant to sections 10, 12, 14(1)(f), 14(2) 14(3)(d) and (f) of the *Act*. These three agreements were the subject matter of this appeal.

#### ORDER

The decision of the City was partially upheld.

All of the information contained in the three agreements, and in the appended schedules, with the exception of the last four clauses in each agreement, was held to fit within the definition of "personal information". The clauses which were not considered information about identifiable individuals; and which are better described as boilerplate, concerned severability; the governing law of the agreement; the release of the employer from contractual liability; the status of the document as the entire agreement between the parties; as well as the standard closing and signature lines.

In analysing this case, Assistant Commissioner Glasberg adopted the definition in

Order M-23 for the term benefits, which is found in section 14(4)(a) of the *Act*.

The word "benefits", as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They include insurance-related benefits such as life, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and pension benefits. As well, a right to reimbursement from the institution for moving expenses will come within the meaning of "benefits". [emphasis added]

The Assistant Commissioner then found that, with some exceptions, each agreement contained clauses relating to the following topics: annual leave, sick leave credits, salary continuation, statutory holidays, accumulated annual leave, salary and economic adjustments, leave without pay, insurance, benefit continuation, pension contributions, payments to be made in the event of death, payment of tax, payment for financial consulting services, professional fees, legal fees, provision of reference letters, cooperation with income tax authorities, relief from employment duties, relocation counselling, the triggering of leave payments in a lump sum, alternative employment and confidentiality.

However, since the entitlements were negotiated by the three individuals in exchange for the acceptance by them of early retirement packages and were not received as a result of being employed by the City, these entitlements did not derive from the original contracts of employment entered into between the parties, nor from periodic changes made to these contracts, and, therefore, did not constitute benefits as defined in Order

M-23. Consequently, the personal information contained in these agreements did not fall within the ambit of section 14(4)(a) of the *Act*.

It was also held that section 14(4)(b) of the *Act* did not apply to the personal information contained in the three agreements because the three former staff members were hired as employees and not as independent contractors having been retained pursuant to contracts of employment as opposed to contracts for personal services.

The Assistant Commissioner then determined that the information in the agreements which indicated the date on which each former employer was hired, the dates on which each former employee was eligible for early retirement, the information relating to the age of the individual, the number of years of service, the last day worked, the date of earliest retirement, the actual number of sick leave and annual leave days used and possible dates for the commencement of pensions under different formulae constituted information relating to the employment history of each individual pursuant to section 14(3)(d) of the *Act*. In addition, the Assistant Commissioner found that one agreement contained the amount which a former employee contributed to a pension plan and that this information fell within the presumption found in section 14(3)(f) of the *Act* because it describes the individual's financial activities.

Concerning the personal information that did not fall under the presumption, the Assistant Commissioner explained that in interpreting section 14(2), all the relevant circumstances of the case must be considered, not only the factors enumerated in the section.

In order to establish the relevance of section 14(2)(a), the appellant must provide evidence demonstrating that the activities of the City have been publicly called into question, necessitating disclosure of the personal information of the affected persons in order to subject the activities of the City to public scrutiny (Order M-84).

Section 14(2)(a) of the *Act* was a relevant consideration which weighed in favour of releasing the personal information found in the retirement agreements because, based on the evidence provided, it was fair to say that the City's decision to negotiate these retirement packages was a matter of serious public debate.

The Assistant Commissioner noted that previous orders issued by the Commissioner's Office have held that, under appropriate circumstances, a relevant consideration in determining whether personal information should be released is whether "the disclosure of the information could be desirable for ensuring public confidence in the integrity of the institution".

In the circumstances of this appeal, public confidence was held to be a relevant consideration because the retirement agreements involved large amounts of public funds, the recipients were senior municipal employees with a high profile within the community, and the current recessionary climate places an unparalleled obligation on officials at all levels of government to ensure that tax dollars are spent wisely. The considerations in favour of disclosure were held to outweigh those which weighed in favour of protecting the privacy interests of the employees.

It was held, however, that an adequate level of public scrutiny respecting the

terms of the agreements could be achieved without disclosing the names or other identifying information of the former employees.

Having concluded that some personal information found in the agreements would constitute an unjustified invasion of personal privacy either under sections 14(3)(d) or (f) of the *Act*, or as a result of the balancing process undertaken through section 14(2), the Assistant Commissioner examined whether this information should be disclosed pursuant to the public interest override found in section 16 of the *Act*.

In order for section 16 of the *Act* to apply, two requirements must be met. First, there must be a compelling public interest in the disclosure of the record. Second, this compelling interest must clearly outweigh the purpose of the exemption (Order M-6).

Due to the fact that the majority of the information found in the retirement agreements had been ordered released, this level of disclosure should permit the appellant to adequately address the public interest concerns which he has expressed.

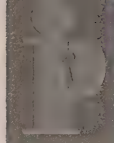
Based on these considerations, the Assistant Commissioner did not find that there existed a compelling public interest in the disclosure of the remaining personal information that clearly outweighed the purpose of the section 14 exemption.

#### SECTION CONSIDERED

2(1), (12), (14)

#### PREVIOUS ORDERS CONSIDERED

87, 99, 179, 203, 204, P-237, P-251, P-326, P-333, P-377, M-2, M-6, M-11, M-12, M-18, M-19, M-23, M-52, M-61, M-84, M-86, M-129, M-170



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**ORDER M-174**  
**APPEAL M-9200226**

Institution: Hamilton-Wentworth Regional  
Police Services Board

AUGUST 11, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

police records • personal information  
• unjustified invasion of • another  
individual's personal privacy • law  
enforcement • confidential source

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**ORDER M-175**  
**APPEAL M-9200368**

Institution: Regional Municipality of Ottawa-  
Carleton

AUGUST 17, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • unjustified invasion  
of • personal privacy

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**ORDER M-176**  
**APPEAL M-9200366**

Institution: City of Brant

AUGUST 17, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • address • name  
• law enforcement • report • inspection

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**ORDER M-177**  
**APPEAL M-9300133**

Institution: Municipality of Metropolitan  
Toronto

AUGUST 19, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER M-178**  
**APPEAL M-9200367**

Institution: Metropolitan Toronto Police  
Services Board

AUGUST 24, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-179**  
**APPEAL M-9300211**

Institution: City of Mississauga

AUGUST 25, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-180**  
**APPEAL M-9200321**

Institution: City of North York

AUGUST 30, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

whether access given • personal  
information • financial history  
• presumption of • unjustified invasion of  
• another individual's personal privacy

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**ORDER M-181**  
**APPEAL M-9200276**

Institution: City of Vaughan

AUGUST 31, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

*Building Code Act* • confidentiality  
provision in other *Act* • personal  
information • address • compiled as part  
of investigation • presumption of  
• unjustified invasion of • personal privacy  
• law enforcement • interfere with law  
enforcement • inspection

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**ORDER M-182**  
**APPEAL M-9300059**

Institution: City of Toronto

SEPTEMBER 3, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

economic or other interests • proposed  
plans or policies • pending policy decision

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**ORDER M-183**  
**APPEAL M-9200216**

Institution: Village of Morrisburg

SEPTEMBER 9, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • "supplied"

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**ORDER M-184**  
**APPEAL M-9200237**

Institution: Leeds and Grenville County  
Board of Education

SEPTEMBER 10, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

notice • by Commissioner • to affected  
person • meetings • substance of  
deliberations • *Education Act*

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**ORDER M-185**  
**APPEAL M-9200251**

Institution: Municipality of Metropolitan  
Toronto

SEPTEMBER 16, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

third party information • burden of proof  
• commercial



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**ORDER M-186**  
**APPEAL M-9200250**

Institution: Municipality of Metropolitan  
Toronto

SEPTEMBER 16, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

third party information • burden of proof  
• commercial

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**ORDER M-187**  
**APPEAL M-9200292**

Institution: Municipality of Metropolitan  
Toronto

SEPTEMBER 16, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

third party information • burden of proof  
• commercial

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**ORDER M-188**  
**APPEAL M-9200387**

Institution: Municipality of Metropolitan  
Toronto

SEPTEMBER 22, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • supplied • in  
confidence • reasonable expectation of  
• harm • undue loss or gain • economic or  
other interests • financial information  
• proposed plans or policies • personal  
information

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**ORDER M-189**  
**APPEAL M-9200421**

Institution: Municipality of Metropolitan  
Toronto

SEPTEMBER 22, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • supplied • in  
confidence • reasonable expectation of  
• harm • undue loss or gain • economic  
and other interests • financial information  
• proposed plans or policies • personal  
information • address • business/personal  
information

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**ORDER M-190**  
**APPEAL M-9300191**

Institution: Hamilton Board of Education

SEPTEMBER 24, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-191**  
**APPEAL M-9300192**

Institution: Hamilton Board of Education

SEPTEMBER 24, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-192**  
**APPEAL M-9200397**

Institution: City of Toronto

SEPTEMBER 28, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

burden of proof • third party information  
• commercial • financial • "supplied" • "in  
confidence"

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**ORDER M-193**  
**APPEAL M-9300201**

Institution: Waterloo Regional Police  
Services Board

SEPTEMBER 27, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-194**  
**APPEAL M-9200370**

Institution: Metropolitan Licensing  
Commission

SEPTEMBER 29, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • advice to  
government • factual material

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**ORDER M-195\***  
**APPEAL M-9300285**

Institution: City of Toronto

SEPTEMBER 29, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information

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**ORDER M-196**  
**APPEAL M-9300081**

Institution: City of Kingston

OCTOBER 1, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

retirement agreement • public scrutiny  
• public confidence • meetings • absence  
of public • substance of deliberations  
• *Municipal Act*

A request was made for access to a retire-  
ment settlement agreement (the agree-  
ment) entered into between the City and  
a former City employee. The City denied  
access to the agreement in its entirety  
based on the exemptions contained in  
sections 6, 10, 12, 13 and 14 of the *Act*.

In her representations, the appellant in-  
dicated that the contents of the record  
were a matter of compelling public inter-  
est and that they should be released pur-  
suant to section 16 of the *Act* (the so-  
called public interest override).

## ORDER

The City's decision was upheld.

In its representations, the City submitted that section 6(1)(b) of the *Act* applied to exempt the record from disclosure in its entirety. This provision reads as follows:

*A head may refuse to disclose a record, that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.*

The Assistant Commissioner pointed out that the *Concise Oxford Dictionary*, 8th edition, defines "substance" as the "theme or subject" of a thing. After having reviewed the contents of the agreement and the representations, The Assistant Commissioner found that the "theme or subject" of the in camera meeting was whether the terms of the retirement agreement were appropriate and whether they should be endorsed.

In Order M-184, which involved a request for a similar type of agreement, the Assistant Commissioner had occasion to interpret the term "deliberations" which is also found in section 6(1)(b) of the *Act*. He stated that:

*... In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions ...*

The Assistant Commissioner then held that the financial terms of the agreement which is the subject of the present appeal

would reveal the actual substance of the deliberations of the in camera meeting and that section 6(1)(b) applied.

The Assistant Commissioner noted that the application of section 16 of the *Act* is limited to a total of six exemptions contained in the *Act*. Since section 6(1)(b) is not one of these, the public interest override is not available in a situation where an institution has successfully applied section 6(1)(b) of the *Act* to withhold a record from disclosure.

In a postscript to the order, the Assistant Commissioner pointed out that this was the second order issued where the subject matter of the appeal involved early retirement agreements entered into between municipalities and senior employees. In Order M-173, the Assistant Commissioner stated that such agreements warrant a high degree of public scrutiny.

Where early retirement agreements have been considered in meetings which are closed to the public, municipalities may, under certain circumstances, be permitted to rely on section 6(1)(b) of the *Act* to withhold access to information contained in these records. It would be unfortunate, however, if institutions began to use this provision to routinely shield the financial terms of such agreements from legitimate public scrutiny.

Section 6(1)(b) is a discretionary exemption which means that the head of an institution can choose to release information about a retirement agreement notwithstanding that it was discussed in camera. The disclosure of this information would take place according to the approach outlined in Order M-173. That is, the contents of these agreements should be released except for information whose disclosure would constitute an unjustified invasion of the employee's personal privacy or reveal the

name or other identifying information of the employee.

In cases such as these, the Commissioner's Office also has the obligation to ensure that, when a head exercises his or her discretion to claim section 6(1)(b), such a decision is based on established legal principles. The Commissioner's Office will, thus, carefully scrutinize an institution's representations on the exercise of discretion when section 6(1)(b) is relied upon to withhold agreements of this sort.

## SECTIONS CONSIDERED

6(1)(b), 6(2)(b), 16

## OTHER STATUTES CONSIDERED

Section 58 of the *Municipal Act*

## PREVIOUS ORDERS CONSIDERED

M-98, M-102, M-173, M-184

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## ORDER M-197

### APPEAL M-9200412

Institution: Township of Maryborough

OCTOBER 7, 1993

(INQUIRY OFFICER HALE)

## KEYWORDS

building permit applications • personal information • name • address • unjustified invasion of • personal privacy

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## ORDER M-198

### APPEAL M-910454

Institution: Metropolitan Toronto Police Services Board

OCTOBER 12, 1993

(INQUIRY OFFICER FINEBERG)

## KEYWORDS

personal information • compiled as part of investigation • unjustified invasion of • another individual's personal privacy • law enforcement • report • charter of rights and freedoms

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**ORDER M-199**  
**APPEAL M-9200264**

Institution: Metropolitan Toronto Police  
Services Board

OCTOBER 14, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • personal privacy  
• method of access to records • reasonable steps to locate record

The appellant requested access to all personal information about himself that had been collected by the Metropolitan Toronto Police in the course of their surveillance or investigation of the appellant.

The Police granted partial access to the records. The records identified as responsive to the request consisted of 11 pages from the notebooks of three police officers, and related to one particular incident. The appellant was provided with partial access to the records. The Police indicated that access was denied to the remaining portions of these records on the basis of sections 8(1)(l) and 14(1) of the *Act*.

**ORDER**

The decision of the Police was partially upheld. The Police were ordered to disclose a decoded version of some information that had been coded.

Inquiry Officer Big Canoe found that the disclosure of the personal information of the affected person contained in the records would constitute an unjustified invasion of the personal privacy of the affected person, and section 38(b) applied. The remaining portion of the records consisted of one severance which was a code used by Police and two words following the code. The Police submit-

ted that this portion of the records qualified for exemption under section 8(1)(l) of the *Act*.

On the basis of the submissions made by the Police, Inquiry Officer Big Canoe was not satisfied that the particular code qualified for exemption under section 8(1)(l) of the *Act*. The Police did not demonstrate a clear and direct linkage between disclosure of the specific information exempted and the harm described in section 8(1)(l).

Inquiry Officer Big Canoe agreed with the statement expressed in Order 19 which referred to section 48 (4) of the *Freedom of Information and Protection of Privacy Act* which corresponds with section 37(3) of the *Act*. In this Order, it was held that this section creates a duty to ensure that the average person can comprehend the record.

In the circumstances of this appeal, it was held that there is no obligation on the Police to create a typewritten copy of the records. However, the information in its coded form was not comprehensible to the average person and, therefore, the Police were ordered to disclose a decoded version of the coded information.

**SECTIONS CONSIDERED**

2(1), 8(1)(l) 14, 36(1), 37(3), 38(a), 38(b)

**PREVIOUS ORDERS CONSIDERED**

19

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**ORDER M-200**  
**APPEAL M-9300233**

Institution: Municipality of Metropolitan Toronto

OCTOBER 15, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-201**  
**APPEAL M-9300322**

Institution: Township of Ignace

OCTOBER 15, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • right of correction

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**ORDER M-202**  
**APPEAL M-910230**

Institution: Metropolitan Toronto Police Services Board

OCTOBER 15, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

wiretap application • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• *Criminal Code* • law enforcement  
• investigative techniques • confidential source • intelligence information • danger to life or safety • report • investigation  
• relations with other governments

A request was made for access to all information relating to "any and all" investigations conducted by the Police relating to the requester.

The Police compiled in excess of 9000 pages and a number of video and audio tapes as being responsive to the request. The requester was granted access to over 3000 pages, in whole or in part, and one videotape in whole. Access was denied to the remainder of the record pursuant to sections 8(1)(c), (d), (e), (g), (h) and (l), and 8(2)(a), (b), (d), 9(1)(d), 10(1)(b), 12 14 and 38(b) of the *Act*.

**ORDER**

The decision of the Police was partially upheld.





The term "intelligence" is not defined in the *Act*. The *Concise Oxford Dictionary*, eighth edition, defines "intelligence" as "the collection of information, [especially] of military or political value", and "intelligence department" as "a [usually] government department engaged in collecting [especially] secret information".

The Williams Commission in its report entitled *Public Government for Private People*, the *Report of the Commission on Freedom of Information and Protection of Privacy/1980*, Volume II at pages 298-99, states:

*Speaking very broadly, intelligence information may be distinguished from investigatory information by virtue of the fact that the former is generally unrelated to the investigation of the occurrence of specific offenses. For example, authorities may engage in surveillance of the activities of persons whom they suspect may be involved in criminal activity in the expectation that the information gathered will be useful in future investigations. In this sense, intelligence information may be derived from investigations of previous incidents which may or may not have resulted in trial and conviction of the individual under surveillance. Such information may be gathered through observation of the conduct of associates of known criminals or through similar surveillance activities.*

Inquiry Officer Seife found that for the purposes of section 8(1)(g) of the *Act*, "intelligence" information may be described as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation of a specific occurrence.

#### SECTION CONSIDERED

2(1), 8(1)(c), (d), (e), (g), (h) and (l), 8(2)(a), (b), (d), 9 (1)(d), 10(1)(b), 12, 14, 38(b)

#### PREVIOUS ORDERS CONSIDERED

37, 139, 170, 200, P-304, P-344, M-58, M-128, M-147, M-170

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*\* An application for judicial review has been brought in respect of each of the following Orders: P-527, P-534, P-545 and M-195. Order P-352 was quashed and the decision of the Archivist of Ontario not to disclose the record in issue was upheld by the Ontario Court of Appeal.*

## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1993 TO DATE *	1992 TO DATE *	1992 TOTAL
Provincial	515	505	639
Municipal	465	350	451
Total	980	855	1090

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1993 TO DATE *	1992 TO DATE *	1992 TOTAL
Provincial	575	517	711
Municipal	454	309	411
Total	1029	826	1122

METHOD OF CLOSING ACTIVE APPEAL FILES 1993 TO DATE		
	BY ORDER	OTHER THAN BY ORDER
Provincial	179	396
Municipal	127	327
Total	306	723

Numbers are subject to change

\* January 1 - September 30

## COMPLIANCE INVESTIGATIONS

The following highlights are prepared for the purpose of convenience only. For accurate reference, refer to the full-text compliance investigations. Reports released on or after June 1 may be ordered from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8; fax (416)326-5317.

### INVESTIGATION I93-010P

Institution: Ministry of Health

SEPTEMBER 29, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

harass • name

A Ministry employee was the respondent in a complaint that had been filed under the Ontario Public Service's Workplace Discrimination and Harassment Prevention Program (WDHP). The employee complained that the Ministry had disclosed his personal information in the context of the WDHP complaint, on four occasions: 1) the WDHP investigation summary report containing the complainant's personal information had been disclosed to the Manager, Director and Administrator; 2) the WDHP interview questions containing the complainant's personal information had been disclosed to the interviewees; 3) the WDHP investigator had disclosed the complainant's personal information to several Ministry staff; and 4) personal information had been disclosed to the individual who had filed the WDHP complaint.

#### CONCLUSION

1. The IPC found that the personal information in the WDHP investigation summary report had been disclosed to the Manager, as the complainant's supervisor, and to the Director, as the Manager's supervisor, and to the Administrator. The IPC determined that these disclosures were in accordance with section

42(d) of the *Act*, since these individuals needed the information in the performance of their duties of implementing remedial action based on the summary report. The IPC also determined that the disclosures were necessary and proper in the discharge of the Ministry's function of providing a workplace free from discrimination and harassment.

2. The IPC found that some of the interview questions had never been asked of the interviewees for whom they had been written. Of the interview questions which had been asked and which had contained the complainant's personal information, the IPC found that it would not have been possible for the WDHP investigator to have properly investigated and determined the validity and accuracy of the allegations against the complainant without disclosing some of the details of those allegations to the individuals interviewed. The IPC concluded that the disclosures via the interview questions had been made for the purpose for which the information had been obtained or compiled, that being for the purpose of conducting a WDHP investigation into the allegations that had been made against the complainant. The disclosures, therefore, had been made in accordance with section 42(c) of the *Act*.

3. The IPC found that in order for the Ministry to meet its responsibility of providing a workplace free from discrimination and harassment, it had to conduct WDHP investigations when required. The IPC found that the WDHP investigator's disclosure of the complainant's personal information had been necessary to the conduct of the WDHP investigation. The IPC also found that each of the individuals who were employees had needed the particular personal information disclosed to them in the performance of their duties. Thus, the IPC concluded that these disclosures

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

A City, I93-008M, I93-033M  
Management Board Secretariat, I93-108P  
Ministry of Community and Social Services,  
I93-062P  
Ministry of Education and Training, I93-089P  
Ministry of Health, I93-010P  
Ministry of the Solicitor General and  
Correctional Services, I93-047P  
A Municipal Board of Education, I93-022M  
A Municipality, I92-84M, I92-90M  
Ontario Labour Relations Board, I93-023P  
Police Complaints Commissioner, I93-041P  
A Regional Municipality, I93-045M  
A Separate School Board, I93-005M  
Worker's Compensation Board, I93-033P

had been made in accordance with section 42(d) of the *Act*.

The IPC found that the disclosure of the complainant's personal information to the one individual who was not an officer or employee of the Ministry, was also in accordance with section 42(c) of the *Act* since the complainant's personal information had been obtained for the purpose for which it had been disclosed, that being to conduct a WDHP investigation.

4. The IPC found that the WDHP investigator's disclosure of the complainant's personal information to the individual who had filed the WDHP complaint, had been for the purpose of keeping the complainant as well as the respondent informed of the details of the WDHP investigation. The IPC concluded that since the personal information had been obtained for the purpose of conducting a WDHP investigation, it had been disclosed for the purpose for which it had been obtained. Therefore, the disclosure had been made in accordance with section 42(c) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 42(c), 42(d)



## INVESTIGATION I93-023P

Institution: Ontario Labour Relations Board

OCTOBER 28, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

labour • disclose

An Employer was engaged in a dispute with a union. The Union was seeking to unionize the employees and had commenced certification proceedings before the Board. During the course of these proceedings, the Employer had been required to submit four lists of its employees to the Board. In a letter to the Board, the Union had asked for a copy of these lists. In a written decision, the Board had complied with the Union's request, ordering that the employee lists be disclosed to the Union. The Employer complained, on behalf of its employees, that the disclosure of the employee lists had been contrary to the *Act*.

### CONCLUSION

The Board had relied on sections 42(a), (e) and (c) of the *Act* for the disclosure.

The IPC found that, in accordance with previous compliance investigations, section 42(a) of the *Act* only applies in the context of a request by an individual, under Part II of the *Act*, for personal information relating to another individual. While the Union had requested in a letter accompanying its application for certification, that the employee lists be forwarded by the Board to the Union, no mention had been made that the request was pursuant to the *Act*. The IPC concluded that since the disclosure did not involve an access request under Part II of the *Act*, section 42(a) did not apply.

However, the IPC found that, even assuming that the request by the Union had been an access request under Part II of the *Act*, the Board would have had to

have complied with the provisions of Part II of the *Act*, in order for the disclosure to have been in accordance with section 42(a). The IPC found that the head had had reason to believe that the disclosure of the employees' personal information might constitute an unjustified invasion of personal privacy. Therefore, in order to comply with the notice provisions under section 28 of Part II of the *Act*, notice would have had to have been given to the employees. The IPC concluded that since no notice was given, the disclosure could not be said to have been in accordance with section 28 of Part II of the *Act*, and therefore, was not in accordance with section 42(a) of the *Act*.

With respect to section 42(e) of the *Act*, the IPC found that the Board had relied on an implicit, rather than an express provision of the *Labour Relations Act* to authorize the disclosure of the employee lists to the Union. The IPC found that since there was no express provision of the *Labour Relations Act* which required the Board to disclose such information, the Board's disclosure could not be said to have been "complying with an *Act* of the Legislature". The IPC concluded that the disclosure was not in accordance with section 42(e) of the *Act*.

With respect to section 42(c) of the *Act*, the IPC found that the Board had obtained the employee lists for the purpose of reviewing an application for union certification pursuant to section 8 of the *Labour Relations Act*. The IPC concluded that if, in the course of conducting such a review, the Board decided it was appropriate for each of the parties to have access to the lists, then the Board's disclosure of the lists to the parties was for the purpose for which they had been obtained, i.e. conducting a review of the application for union certification. The IPC concluded that since the personal information

had been disclosed for the purpose for which it had been obtained by the Board, the disclosure was in accordance with section 42(c) of the *Act*.

### SECTIONS CONSIDERED

2(1), 28(1)(b), 42(a), 42(e), 42(c)

### STATUTES CONSIDERED

*Labour Relations Act*

## INVESTIGATION I93-033P

Institution: Workers' Compensation Board

JULY 8, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclosure • WCB

An individual complained that the Workers' Compensation Board (WCB) had disclosed her medical information in a Decision Review Specialist's report to her employer.

### CONCLUSION

The IPC had previously investigated similar complaints and had found that the disclosure of medical information in a Decision Review Specialist's report to a WCB applicant's employer was in accordance with section 72(2) of the *Workers' Compensation Act* which states:

*Every decision of the Board and the reasons therefor shall be communicated promptly in writing to the parties of record.*

Since such a disclosure complied with an Act of the Legislature, i.e., the *Workers' Compensation Act*, the disclosure was found to be in accordance with section 42(e) of the *Act*.

The IPC, therefore, informed the complainant of these findings from our previous investigations and our conclusion that they also applied to the circumstances of her complaint.



#### SECTIONS CONSIDERED

42(e)

#### STATUTES CONSIDERED

*The Workers' Compensation Act*

*\*No compliance investigation report was issued in this case.*

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### INVESTIGATION I93-041P

Institution: Police Complaints

Commissioner

AUGUST 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

address • disclose • medical • name  
• police

The complainant had written to the Chief of a municipal police force, complaining about the conduct of police officers and the conduct of two doctors. The Deputy Chief of Police had forwarded the complaint letter to the Police Complaints Commissioner (the PCC). However, the complaints about the police had not been within the PCC's jurisdiction. The PCC had then written to the College of Physicians and Surgeons of Ontario (the College) regarding the complaints about the doctors, enclosing the complaint letter and a copy of the letter from the Deputy Chief. The complainant believed that the disclosure of the letters to the College had breached her privacy.

#### CONCLUSION

The IPC found that since the letters contained recorded information about the complainant relating to her complaints about the police and doctors, they contained her "personal information", as defined in section 2(1) of the *Act*.

Since the personal information had been collected indirectly by the PCC, the reasonable expectations of the complainant could not be a factor in determining whether the disclosure to the College had

been for a consistent purpose. Thus, the IPC considered whether the disclosure had been reasonably compatible with the purpose for which the personal information had been obtained by the PCC.

The PCC's purpose for obtaining the complainant's personal information relating to her complaints about the doctors had been to investigate her complaints. However, the PCC had not been able to investigate because the complaints had not been within its jurisdiction. The College, however, had the proper jurisdiction to investigate the complaints about the doctors. Thus, the disclosure to the College had been reasonably compatible with the purpose for which the personal information had been obtained. Therefore, the disclosure had been made in accordance with section 42(c) of the *Act*, for a consistent purpose. The complainant's name and address had also been disclosed by the PCC to the College in accordance with section 42 of the *Act*.

However, the disclosure to the College of the complainant's personal information relating to her complaints about the police had not been reasonably compatible with the purpose for which the personal information had been obtained, since the College did not have the jurisdiction to investigate the complaints about the police officers. Similarly, the disclosure of the complainant's personal information relating to other matters had not been reasonably compatible with the purpose for which the personal information had been obtained, and thus contravened section 42(c) of the *Act*.

#### RECOMMENDATION

The IPC acknowledged that the complainant's personal information had been forwarded to the College as a service to the complainant. The IPC recommended that any personal information not re-

lated to a complaint or necessary to administer a complaint, be severed from the complaint forwarded to another body with the jurisdiction to investigate. The IPC also recommended that the PCC advise individuals if their complaints are being forwarded to another investigatory body.

#### SECTIONS CONSIDERED

2(1), 42(c)

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### INVESTIGATION I93-047P

Institution: Ministry of the Solicitor General and Correctional Services

OCTOBER 27, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

notice • collection

The complainant was concerned about attendance review letters, regarding sick time, that had been sent to bargaining unit staff at one of the correctional facilities of the Ministry of the Solicitor General and Correctional Services (the Ministry). These letters were part of the process of reviewing, monitoring and controlling the attendance of all employees within the facility. Employees whose rate of absenteeism was becoming unacceptable, were the subject of these letters.

The complainant was concerned, however, that the Ministry had not at any time notified the individuals involved, including himself, that the personal information contained in these attendance review letters had been collected. He was also concerned that the attendance review letters had subsequently been summarized in a list and posted on a notice board.

#### CONCLUSION

The Ministry acknowledged that notice of the collection of attendance information, which had later been included



in the attendance letters, had not been given to staff who had been hired before the *Act* was in effect, in accordance with section 39(2). This included the complainant.

However, the Ministry submitted that in its view sufficient notice had been provided to the complainant, since information about the collection had appeared in the 1993-1994 Directory of Records.

It was the IPC's view that including the information in the Directory of Records did not constitute sufficient notice of the Ministry's collection. Such an approach would require that individuals regularly check the Directory of Records to determine what information was being collected rather than being notified of the collection by the Ministry. This approach would not be consistent with the purposes of section 39(2) which is intended to make individuals aware of information that is being collected and the purpose(s) for the collection. In the IPC's view, the Ministry had not given notice of its collection of personal information to employees hired before the implementation of the *Act*, as required by the *Act*.

The Ministry acknowledged that the list containing summarized attendance information had been inappropriately placed in a public area where several employees had access to the information. The IPC concluded that the personal information in the summary list had not been disclosed in accordance with section 42 of the *Act*. However, the IPC noted that the list had been removed and placed in a confidential envelope for restricted use only and that the complainant had also received a verbal apology.

#### RECOMMENDATION

The IPC recommended that:

1. the Ministry provide notice of the collection of attendance information to those employees hired before the implementation of the *Act* in accordance with section 39(2) of the *Act*; and
2. the Ministry include information about the requirements of the *Act* for the disclosure of personal information in any policy or guidelines on the reviewing, monitoring and controlling of employees' attendance.

#### SECTIONS CONSIDERED

2(1) (h), 39(2), 42

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### INVESTIGATION I93-062P

Institution: Ministry of Community and Social Services

AUGUST 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • socialben

A lawyer in private practice stated he had received a facsimile in error, from the Ministry. The facsimile had been intended for another department of the Ministry and had contained personal information about a Ministry client including her social benefits entitlement and the amount of her rent payments.

#### CONCLUSION

The IPC found that the Ministry had inadvertently disclosed the personal information to the lawyer. However, as a result of our contact, the Ministry took appropriate measures to minimize the possibility of misdirected facsimiles in the future. These steps included having the supervisor advise the employee responsible, of the proper procedures for faxing personal information; making all front line managers of the area office

aware of the complaint and providing them with a copy of the Ministry's guidelines on the transmission of facsimiles (based on those prepared by the IPC) for staff review and distribution.

#### SECTIONS CONSIDERED

2(1), 42

*\*No compliance investigation report was issued in this case.*

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### INVESTIGATION I93-089P

Institution: Ministry of Education and Training

OCTOBER 18, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

employee

A former employee of the Ministry complained that her privacy had been breached when her separation slip, placed in an envelope marked "(Named) Office" only, had been mailed to the office where she had previously worked. The envelope had been opened by an employee in the office, and had later been mailed to the complainant's home in an envelope marked "Confidential".

#### CONCLUSION

Following the IPC contact with the Ministry, the Freedom of Information and Privacy Co-ordinator sent a memo to all Ministry staff clarifying the Ministry's position. It advised that personal records should be sent in a confidential envelope to one's home address, if an individual has ceased employment with the Ministry. On this basis, the complaint was settled.

#### SECTIONS CONSIDERED

2(1), 32(d)

*\*No compliance investigation report was issued in this case.*





## INVESTIGATION I93-108P

Institution: Management Board Secretariat

NOVEMBER 5, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclose • résumé

An individual sent an unsolicited résumé to the Secretariat. The Secretariat then forwarded the resume to a third party for consideration, without the complainant's consent. The complainant telephoned the IPC office with her concern.

### CONCLUSION

The Secretariat was contacted by the IPC. The IPC found that the disclosure took place contrary to the Secretariat's established policies and practices. These policies require that consent first be obtained from the individual, prior to subsequent disclosure to a third party. The IPC suggested that the Secretariat apologize to the complainant, which the Secretariat agreed to do. The complainant was satisfied with this apology.

### SECTIONS CONSIDERED

2(1); 42(b)

*\*No compliance investigation report was issued in this case.*

## INVESTIGATION I92-84M

Institution: A Municipality

SEPTEMBER 30, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

confid • security • WCB

An employee of the municipality's ambulance service had attended an ambulance call which had caused him to experience "critical incident" stress. The employee had used the services of the ambulance service's staff psychologist, and had

filed a claim with the Workers' Compensation Board (WCB). The employee stated that after the WCB claim had been filed, his supervisor had improperly collected and disclosed his personal information to the WCB, and the Psychologist had improperly disclosed his personal information to the supervisor and to the WCB.

The employee also questioned the security of the ambulance service's log books and telephone notes containing his personal information.

### CONCLUSION

With respect to the supervisor's collection of the complainant's personal information, the IPC found that the ambulance service had had an obligation to ensure that the WCB had all the necessary information to process the employee's WCB claim. The ambulance service had a health and safety unit (the unit) that had such responsibilities as the administration of WCB accident claims; the signing of compensation forms, and the submission of required reports and information.

The IPC determined that it had been necessary for the supervisor to collect information relevant to the processing of the WCB claim, to give to the unit. The IPC concluded that since the supervisor's collection had been necessary for the proper administration of the lawfully authorized activity of processing an employee's WCB claim, the collection had been in accordance with section 28(2) of the *Act*.

With respect to the supervisor's disclosure of the complainant's personal information directly to the WCB, the ambulance service had relied upon section 32(e) of the *Act*. It cited section 133(1) of the *Workers' Compensation Act* (the *WCA*), which states that an em-

ployer must provide the WCB with any information respecting a claim which the WCB may require. The IPC concluded that since the unit had the responsibility of administering WCB claims, a disclosure to the WCB by the unit acting on behalf of the employer would have been in accordance with section 133(1) of the *WCA*. However, there was no documentation to show that the supervisor shared the responsibilities of the unit. Therefore the supervisor's disclosure directly to the WCB had not been in accordance with section 133(1) of the *WCA* and therefore, was not in accordance with section 32(e) of the *Act*.

With respect to the psychologist's disclosure to the supervisor, the ambulance service stated that it had relied on section 32(d) of the *Act*. However, the IPC determined that the personal information disclosed by the psychologist to the supervisor had not been needed by the supervisor to perform his duties in respect of the WCB claim. Thus, the disclosure had not been necessary and proper in the discharge of the institution's function of processing the claim. Therefore, the disclosure had not been in accordance with section 32(d).

The ambulance service was also of the view that section 32(c) applied to the disclosure since the information had been collected by the psychologist to ensure the well-being of the complainant and had been disclosed to the supervisor for the same purpose. However, there was documentation regarding the confidentiality requirements of the Critical Incident Stress Debriefing Team (the Team) of which the psychologist was a member, which emphasized that staff were entitled to strict and complete confidentiality when consulting one of its members. It was the IPC's view that it was the Team and not the supervisor that had primary responsibility for the well-being of the

employee and as part of that responsibility, its members were required to abide by the confidentiality policy. The IPC regarded the disclosure by the psychologist, which was contrary to this policy, not to have been for the well-being of the complainant. Therefore, the disclosure had not been for the same purpose for which the information had been collected and was not in accordance with section 32(c).

With respect to the disclosure by the psychologist to the WCB, the psychologist as an employee of the ambulance service, had been contacted by the WCB for further particulars respecting the employee's claim. The IPC determined that the psychologist had disclosed personal information in accordance with section 133(1) of the *WCA* and therefore, the disclosure had been in accordance with section 32(e) of the *Act*.

The IPC concluded that reasonable measures had been in place to prevent unauthorized access to supervisors' log books and telephone notes while they were in the area office. However, the IPC found that these measures had not been defined and documented as required by section 3(1) of Regulation 823, as amended by Regulation 395/91.

#### RECOMMENDATION

The IPC recommended that:

1. the ambulance service should take steps to ensure that all staff were aware of the limited purposes for which the disclosure of personal information is permitted under section 32 of the *Act*;
2. if it was the ambulance service's intent that supervisors should have equal responsibility as the health and safety unit for the administration of WCB claims, including communicating directly with the WCB, then the ambulance service should clearly set this out in a written

policy, and ensure that all staff were made aware of it; and

3. the ambulance service's privacy guidelines should include information regarding the measures in place for the safe storage of supervisors' logs and telephone notes, and access to them.

#### SECTIONS CONSIDERED

28(2), 32(c), 32(d), Regulation 823/90 s.3(1), as amended by Regulation 395/91

#### STATUTES CONSIDERED

*Workers' Compensation Act*

### INVESTIGATION I92-90M

Institution: A Municipality

SEPTEMBER 30, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

confid • security • WCB

An employee of the municipality's ambulance service had attended an ambulance call which had caused him to experience "critical incident" stress. The employee had used the services of the ambulance service's staff psychologist and had filed a claim with the Worker's Compensation Board (the WCB). He believed that his privacy had been breached when his supervisor consulted with the psychologist and with a Union Representative about his treatment, diagnosis and follow-up interviews in connection with his WCB claim.

The employee also questioned the security of the ambulance service's log books and telephone notes which had contained his personal information.

#### CONCLUSION

The IPC determined that the psychologist had disclosed to the supervisor that he had had contact with the complainant about his WCB claim for critical incident

stress. The ambulance service was of the view that section 32(c) of the *Act* applied to the disclosure since the information had been collected in order to ensure the well-being of the complainant and had been disclosed to the supervisor for the same purpose. However, there was documentation regarding the confidentiality requirements of the Critical Incident Stress Debriefing Team (the Team), of which the psychologist was a member, which emphasized that staff were entitled to strict and complete confidentiality when consulting with one of its members. It was the IPC's view that the Team and not the supervisor had the primary responsibility for ensuring the well-being of the employee, and as part of that responsibility, Team members were required to abide by the confidentiality policy. The IPC regarded the disclosure by the psychologist, which was contrary to this policy, not to have been for the well-being of the complainant. The IPC concluded therefore, that the disclosure had not been for the same purpose for which the personal information had been collected and was not in accordance with section 32(c).

With respect to the disclosure of the complainant's personal information to the union representative, the ambulance service stated that the disclosure had been in accordance with section 32(e) of the *Act* since the disclosure had been authorized under an article of the collective agreement made under the *Labour Relations Act*. The IPC determined that the article did not provide for the disclosure of the complainant's personal information. Thus the disclosure did not comply with an agreement made under an *Act* and was not in accordance with section 32(e) of the *Act*.

The IPC concluded that reasonable measures had been in place to prevent unauthorized access to log books and telephone notes while they were in the area





office. However, the IPC found that these measures had not been defined and documented as required by section 3(1) of Regulation 823 under the *Act*, as amended by Regulation 395/91.

#### RECOMMENDATION

The IPC recommended that:

1. the ambulance service should take steps to ensure that in future all disclosures of personal information were made in accordance with the *Act*; and
2. the ambulance service's privacy guidelines should include information regarding the measures in place for the safe storage of supervisor's logs and telephone notes, and access to them.

#### SECTIONS CONSIDERED

32(c), 32(d), Regulation 823/90 s.3(1), as amended by Regulation 395/91

#### STATUTES CONSIDERED

*Workers' Compensation Act*

### INVESTIGATION I93-005M

Institution: A Separate School Board

JULY 1, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collection

A teacher complained that the School Board was collecting personal information about its teachers on two forms: a medical certificate and a pastoral reference form.

The medical certificate requested a physician to certify that the teacher met certain criteria and was able to perform the duties of a teacher. The certificate asked that a letter of explanation be attached where an individual did not meet the criteria and/or was unable to perform the job duties so that the School Board could assess what measures would be

required in order to accommodate the restrictions in question. The complainant objected to the Board collecting this medical information.

The pastoral form asked for information on how the teacher contributed and participated in the life of the church and/or the activities of the parish/local church community. The complainant felt that the Board should simply accept a letter from a priest, minister or deacon attesting to the religious conviction of the individual.

#### CONCLUSION

Through mediation, the School Board agreed to revise its two forms as follows:

A. a clarification was added to the medical certificate indicating that if a letter of explanation was to be attached, it should only contain a description of the individual's medical restrictions, not a description of the related medical disorder or condition;

B. the pastoral reference would become optional, and as an alternative, a letter of reference from the individual's pastor could be submitted.

The complainant was satisfied with these changes in the Board's collection of personal information.

#### SECTIONS CONSIDERED

28, 29

*\*No compliance investigation report was issued in this case.*

### INVESTIGATION I93-008M

Institution: A City

OCTOBER 26, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collection • notice

A taxi driver complained that the City had failed to provide proper notice for the collection of personal information on its License Renewal Application (the application), as it pertained to taxicab drivers and owners.

The complainant was also concerned that the City was collecting financial and criminal record information about taxi drivers and owners on the form, without the proper legal authority to do so. The complainant was specifically concerned with questions that were related to bankruptcy proceedings, outstanding judgments, and criminal convictions.

#### CONCLUSION

The IPC found that the City's collection of information about criminal convictions for which a pardon had not been received, from taxicab owners and drivers was in accordance with section 28(2) of the *Act*. The IPC determined from a review of the *Municipal Act* and the relevant by-laws that the licensing of taxicab owners and drivers was a lawfully authorized activity. Since the City was required to determine if the issuance or renewal of a license would be contrary to the public interest, it was the IPC's view that the collection of criminal record information was necessary to the proper administration of a lawfully authorized activity.

The IPC also found that the City's collection of financial information from owners and from taxicab drivers, who were also "lessees" of the licenses was in accordance with section 28(2) of the *Act*. The City was required by its by-law to issue or renew a license except where, "having a regard to his financial position, the applicant or licensee cannot be expected to be financially responsible in the conduct of the business which is to be licensed or is licensed". It was the IPC's view that for these individuals, such financial information as bankruptcy status



and outstanding judgements was an important consideration when renewing or granting their licences. It was the IPC's view that the collection of this information was necessary to the proper administration of a lawfully authorized activity.

However, the IPC found that the City's collection of financial information from non-lessee drivers was not in accordance with section 28(2) of the *Act*, because non-lessee drivers could not be said to be conducting a "business which is to be licensed or is licensed". In our view, the collection of the financial information from non-lessee drivers was, therefore, not necessary to the proper administration of taxicab licensing.

The IPC also found that the City did not provide notice of its collection on the application, as required by section 29(2) of the *Act*.

#### RECOMMENDATION

During the course of our investigation, the City amended its application to include proper notice.

We thus recommended that the City discontinue the collection of financial information, i.e. the two questions concerning bankruptcy status and outstanding judgements, from non-lessee drivers. We suggested that in order to achieve this, the City may wish to revise its application, so that only drivers who were also lessees of licences, and owners were instructed to complete these two questions.

#### SECTIONS CONSIDERED

28(2), 29(2)

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### INVESTIGATION I93-022M

Institution: A Municipal Board of Education

SEPTEMBER 29, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

invasion • name • noticehead

An individual complained to the IPC that the Chair of the Board had identified him to a local newspaper, as one of four individuals who had made the greatest number of requests for access to information under the *Act*. The newspaper subsequently published this information.

#### CONCLUSION

Although the Board acknowledged that there had been a disclosure, it was of the view that section 50(1) of the *Act* had been applicable and that it had not been necessary to rely on section 32 for the disclosure. Section 50(1) of the *Act* states that "if a head may give access to information under this *Act*, nothing in this *Act* prevents the head from giving access to that information in response to an oral request or in the absence of a request".

It was the Board's view that the term "information" encompassed both personal information and information that was not personal.

However, the IPC's view is that section 50(1) of the *Act* was designed to promote the routine disclosure of information other than personal information, in accordance with the purposes of the *Act*.

However, even assuming that section 50(1) permitted the disclosure of personal information in the absence of a request under Part I, the IPC's view was that the disclosure would still have had to have been in accordance with the *Act* since 50(1) specifically states, "If a head may give access to information under this *Act*...". In order to comply with Part I of the *Act*, an institution must comply with section 21 which requires the notification of individuals in situations where

disclosure of the personal information might constitute an unjustified invasion of personal privacy. In this case, there had not been any notification, therefore, the disclosure would not have complied with Part I of the *Act* and thus, would not have been in accordance with section 50(1).

The IPC also determined that none of the provisions of section 32 applied to the disclosure.

#### RECOMMENDATION

The IPC recommended that in future, the Board should take steps to ensure that all disclosures be made in accordance with the *Act*. For example, advice regarding the disclosure of the names of individuals making access requests should be incorporated into any Board policies or guidelines concerning the *Act*.

#### SECTIONS CONSIDERED

2(1), 32, 50(1)

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### INVESTIGATION I93-033M

Institution: A City

OCTOBER 22, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

accesspro

An individual made a request for access to information under the *Act* with the City, for a letter regarding transit services. The City responded that no such letter existed in its files. The individual then made an access request with the transit services and received a copy of the letter in question. The letter in question was date-stamped by the City prior to his original access request. The individual then complained that the City had withheld the letter in question when responding to his access request.



#### CONCLUSION

The IPC found that the letter had been inadvertently omitted from the City's response to the complainant's access request. The IPC found that the City Clerk had not intentionally withheld the letter in question.

#### RECOMMENDATION

The IPC suggested that the City take appropriate steps to ensure that, in future, responses to access requests be complete.

*\*No compliance investigation report was issued in this case.*

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### INVESTIGATION I93-045M

Institution: A Regional Municipality

AUGUST 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose

A lawyer in private practice stated he had received a facsimile in error, from the Municipality. The facsimile had been intended for another department of the Municipality, and had contained personal information about a client of the Municipality, including the fact that the client had passed an addiction program.

#### CONCLUSION

The IPC found that the Municipality had inadvertently disclosed the personal information to the lawyer. However, as a result of our contact, the Municipality took appropriate steps to minimize the possibility of facsimiles being misdirected in the future. These steps included advising the employee in question of the proper faxing procedures and the distribution of faxing guidelines to all staff, accompanied by a summary of the complaint. In addition, the Municipality planned to develop a corporate fax cover sheet which would identify the Municipality as the sender. The cover sheet would advise the recipient that if he or she was not the intended recipient, the fax should be destroyed and the Municipality notified.

#### SECTIONS CONSIDERED

2(1), 42

*\*No compliance investigation report was issued in this case.*

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	97	61	73
Municipal	53	69	94
Non-Jur	9	0	0
Total	159	130	167

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1993 TO DATE*	1992 TO DATE*	1992 TOTAL
Provincial	74	81	104
Municipal	66	77	98
Non-Jur	9	0	0
Total	149	158	202

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1993 TO DATE		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	13	16
Retention	0	2
Use	1	3
Disclosure	53	40
Access	1	1
Correction	2	0
Notice	1	0
P.I. Bank	0	2
Security	1	1
Personinfo	1	1

Numbers are subject to change

\* January 1 - September 30

\*Excludes cancelled investigations.

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# IPC PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

Governance  
Public Access

## ORDERS

All IPC orders are highlighted briefly below. Selected orders include textual summaries. This information is provided for convenience only. For accurate reference, refer to the full-text orders available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8; fax (416)326-5317.

### ORDER P-554

#### APPEAL P-9300049

Institution: Management Board  
Secretariat

OCTOBER 18, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

notice of refusal • content of decision  
letter

### ORDER P-555

#### APPEAL P-9300122

Institution: Ontario Hydro

OCTOBER 19, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

economic or other interests • proposed  
plans or policies • reasonable expectation  
of harm • pending policy decision

### ORDER P-556

#### APPEAL P-9300298

Institution: Ministry of the Solicitor General  
and Correctional Services

OCTOBER 20, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

reasonable steps to locate record

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**ORDER P-557**  
**APPEAL P-9200419**

Institution: Ministry of Agriculture and Food

OCTOBER 20, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

law enforcement • security concerns  
• burden of proof • reasonable expectation of harm

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**ORDER P-558**  
**APPEAL P-9300238**

Institution: Ministry of Environment and Energy

OCTOBER 20, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • estimate

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**ORDER P-559**  
**APPEAL P-9300113**

Institution: Ministry of Natural Resources

OCTOBER 22, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • name • address  
• public record • unjustified invasion of  
• personal privacy

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**ORDER P-560**  
**APPEAL P-9300300**

Institution: Ministry of the Solicitor General and Correctional Services

OCTOBER 22, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER P-561**  
**APPEAL P-910275**

Institution: Stadium Corporation of Ontario Limited

OCTOBER 22, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

third party information • trade secret  
• technical • "supplied" • "in confidence"  
• reasonable expectation of • harm  
• competitive position • undue loss or gain • public interest override

The Stadium Corporation of Ontario Limited (SkyDome) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of any and all reports, correspondence, memos or other documents relating to the testing performed by [a named company] prior to October 1988 on the steel that was used in the construction of the retractable roof of SkyDome. After considering the submissions of a number of third parties, SkyDome decided to withhold access to the records in their entirety, pursuant to sections 17(1)(a), (b) and (c) of the *Act*. The requester appealed the decision.

During the course of the appeal, the Office of the Commissioner learned that one group of records to which the appellant sought access was available for review at the City of Toronto's Buildings and Inspections department.

**ORDER**

The decision of SkyDome was partially upheld.

Assistant Commissioner Glasberg first considered whether the information contained in the records constituted trade secrets for the purposes of the first part of the section 17(1) test. In the course of this analysis, he accepted the definition of trade secret that was

adopted by Commissioner Tom Wright in Order M-29.

The Assistant Commissioner found that the disclosure of the information contained in the records would reveal a series of novel construction and testing techniques developed during the construction of the SkyDome structure. He indicated that a number of court decisions have held that, where Party X has used his or her skill and knowledge base to produce a result which another party could only obtain independently through the investment of comparable time and effort, the courts will protect the proprietary interests of Party X in the information relating to the development of the product. That result will be achieved through the application of principles of fairness to prevent other parties from making use of the information to the detriment of Party X.

The Assistant Commissioner went on to state that the information contained in the majority of the records represents an acquired body of knowledge, experience and skill relating to the development of certain techniques, methods and processes unique to the construction of the SkyDome structure. He then concluded that this knowledge base, which may be described as a learning curve, confers proprietary rights on its owners.

The Assistant Commissioner found that this learning curve embodies elements of a method, compilation or process which is contained in a device, product or mechanism. On this basis, the first aspect of the definition of a trade secret has been met. He then concluded that the information which collectively makes up this learning curve may be used in the architectural, engineering or construction trades and is not generally known in these trades. On this



basis, the next two components of the test have been established.

With respect to the fourth component of the test, the Assistant Commissioner determined that the information contained in the record groupings would, if disclosed, provide competitors with a knowledge base which the builders of SkyDome took many years to develop. This information could also be used by such competitors to the detriment of the original construction group. For this reason, he found that the information contained in the records has economic value, which could be compromised if generally known.

The Assistant Commissioner then pointed out that, in order to qualify as a trade secret, the information in question must be subject to efforts which are reasonable, in the circumstances, to maintain its secrecy. He noted that the information at issue was circulated to a number of members of the construction group. The question is whether this distribution of the reports suggests that the efforts taken to maintain the secrecy of the proprietary information were sufficient. In order to address this issue, it is important to recognize that the construction of a structure as complex as SkyDome requires the interplay of many construction professions and trades. In this respect, it is unrealistic to assume that a single firm, which has acquired or otherwise developed specific proprietary information, could complete a major construction project without sharing this information with other participants.

The Assistant Commissioner stated that the fact that information of this nature comes into the possession of a number of firms involved in a construction project does not affect its confidential character, provided that the information was: (1) imparted to the other participants in confidence; and (2) has not become the

subject of general knowledge in the trade. He concluded, based on the facts of the case, that both SkyDome and the affected persons took efforts which were reasonable in the circumstances to maintain the confidentiality of the information contained in the records. The Assistant Commissioner then found that the second and third parts of the section 17(1) test had been fulfilled with the result that the records were exempt from disclosure.

The Assistant Commissioner then considered the records which were publicly available in the City of Toronto's Buildings and Inspections department. The key issue for determination was whether these records were supplied in confidence to SkyDome for the second part of the section 17(1) test. In determining this issue, the Assistant Commissioner pointed out that the section requires that the expectation of confidentiality be founded on reasonable grounds. The Assistant Commissioner then indicated that, in determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

1. Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
2. Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.
3. Not otherwise disclosed or available from sources to which the public has access.
4. Prepared for a purpose which would not entail disclosure.

Based on the fact that these records were available from a public source, the Assistant Commissioner was unable to conclude that they were supplied to the institution in confidence either explicitly or implicitly. This meant that SkyDome could not rely on section 17(1) of the *Act* to exempt these records from disclosure.

#### SECTIONS CONSIDERED

17, 23

#### PREVIOUS ORDERS CONSIDERED

36, P-246, P-463, M-29, M-169

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### ORDER P-562

#### APPEALS P-9200338, P-9200566, P-9200567

Institution: Ministry of Housing

OCTOBER 22, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

record does not exist • *French Services Act*  
• personal information • unjustified  
invasion of • personal privacy

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### ORDER P-563

#### APPEAL P-9300157

Institution: Management Board Secretariat

OCTOBER 22, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

personal information • unjustified invasion  
of • personal privacy

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### ORDER P-564

#### APPEAL P-9300269

Institution: Ministry of Health

OCTOBER 29, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

personal information • opinions or views  
• supplied in confidence • unjustified  
invasion of • personal privacy



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**ORDER P-565**  
**APPEALS P-9300225,**  
**P-9300226, P-9300227**

Institution: Ministry of Health  
OCTOBER 29, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • name • address  
• business\personal information  
• unjustified invasion of • personal privacy  
• fees • preparing record

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**ORDER P-566**  
**APPEALS P-9300221,**  
**P-9300222**

Institution: Ministry of Health  
OCTOBER 29, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER P-567**  
**APPEAL P-9200747**

Institution: Ministry of the Solicitor General  
and Correctional Services  
NOVEMBER 1, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

representations in appeal • personal  
information • compiled as part of  
investigation • presumption of  
• unjustified invasion of • another  
individual's personal privacy • law  
enforcement • interfere with law  
enforcement

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**ORDER P-568**  
**APPEAL P-9300312**

Institution: Ministry of the Solicitor General  
and Correctional Services  
NOVEMBER 2, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • medical,  
psychiatric or patient records  
• presumption of • unjustified invasion of  
• personal privacy • public interest  
override

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**ORDER P-569**  
**APPEAL P-9300034**

Institution: Ministry of Natural Resources  
NOVEMBER 2, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-570**  
**APPEAL P-9300058**

Institution: Ministry of Finance  
NOVEMBER 2, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-571**  
**APPEAL P-9200813**

Institution: Ministry of the Attorney General  
NOVEMBER 3, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

witness statements • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy

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**ORDER P-572**  
**APPEAL P-9200791**

Institution: Ontario Criminal Code Review  
Board  
NOVEMBER 4, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

access procedure • method of access  
• reasonable steps to locate record

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**ORDER P-573**  
**APPEAL P-9300087**

Institution: Ministry of Housing  
NOVEMBER 5, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-574**  
**APPEAL P-9200599**

Institution: Ministry of the Solicitor General  
and Correctional Services  
NOVEMBER 8, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

third party information • commercial  
• technical • "supplied" • "in confidence"  
• reasonable expectation of • harm

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**ORDER P-575**  
**APPEAL P-9300406**

Institution: Ontario Native Affairs  
Secretariat  
NOVEMBER 8, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-576**  
**APPEAL P-9200561**

Institution: Ministry of Finance  
NOVEMBER 10, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • professional  
capacity • advice to government • third  
party information • financial information  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • similar  
information • no longer supplied

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**ORDER P-577**  
**APPEAL P-9200746**

Institution: Ministry of the Attorney General  
NOVEMBER 15, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**  
solicitor client privilege • crown counsel  
• in contemplation for use • in litigation

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**ORDER P-578**  
**APPEALS P-9200648,**  
**P-9200652**

Institution: Ontario Labour Relations Board  
NOVEMBER 17, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**  
personal information • unjustified invasion  
of • personal privacy

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**ORDER P-579**  
**APPEAL P-9300260**

Institution: Ministry of Health  
NOVEMBER 18, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**  
solicitor client privilege • legal advice  
• waiver

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**ORDER P-580**  
**APPEAL P-9300286**

Institution: Ministry of the Attorney General  
NOVEMBER 17, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**  
solicitor client privilege • legal advice

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**ORDER P-581**  
**APPEAL P-9300152**

Institution: Stadium Corporation of Ontario  
Limited  
NOVEMBER 22, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**  
third party informaion • “supplied” • “in  
confidence” • economic and other interests  
• monetary value • reasonable expectation  
of harm • plans or positions

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**ORDER P-582**  
**APPEAL P-9300144**

Institution: Ministry of Culture, Tourism  
and Recreation  
NOVEMBER 22, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**  
third party information • commercial  
• technical • “supplied” • “in confidence”  
• reasonable expectation of harm

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**ORDER P-583**  
**APPEAL P-910609**

Institution: Ministry of Finance (Ontario  
Securities Commission)  
NOVEMBER 23, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**  
personal information • financial history  
• presumption of • unjustified invasion of  
• personal privacy • third party  
information • commercial • financial  
• “supplied” • “in confidence” • reasonable  
expectation of • harm • similar  
information • no longer supplied • law  
enforcement • confidential source  
• intelligence information • report  
• investigation • *Securities Act* • solicitor  
client privilege • advice to government  
• public interest override • burden of proof

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**ORDER P-584**  
**APPEAL P-9300341**

Institution: Ministry of Environment and  
Energy  
NOVEMBER 24, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**  
third party information • technical

• “supplied” • “in confidence” • reasonable  
expectation of • harm • competitive  
position • similar information • no longer  
supplied • undue loss or gain • solicitor  
client privilege

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**ORDER P-585**  
**APPEAL P-9300317**

Institution: Ministry of the Attorney General  
NOVEMBER 24, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**  
advice to government • solicitor client  
privilege • crown counsel • for use in  
giving legal advice • in contemplation for  
litigation • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy

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**ORDER P-586**  
**APPEAL P-9300131**

Institution: Ministry of Health  
NOVEMBER 25, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**  
delegation of power or duty • compliance  
investigations • solicitor client privilege  
• reasonable steps to locate record

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**ORDER P-587**  
**APPEAL P-9200777**

Institution: Archives of Ontario  
NOVEMBER 26, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**  
personal information • identifiable  
individual

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## ORDER P-588 APPEAL P-9200389

Institution: Ministry of the Solicitor General  
and Correctional Services

NOVEMBER 29, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • danger to safety or  
health • law enforcement • security  
concerns

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## ORDER P-589 APPEAL P-9300190

Institution: Ministry of the Attorney General

NOVEMBER 29, 1993

(INQUIRY OFFICER SEIFE)

### KEYWORDS

personal information • law enforcement  
• interfere with law enforcement • *Family  
Support Plan Act*

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## ORDER P-590\* APPEALS P-9300322, P-9300388

Institution: Ministry of Health

NOVEMBER 30, 1993

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

Commissioner • consideration of section  
not raised by institution • exchange of  
representations in appeal • personal  
information • OHIP • economic and  
other interests • reasonable expectation of  
harm

The Ministry of Health (the Ministry) received two requests from different requesters pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the "version codes" associated with the health numbers of three named individuals. In each case, the requester provided the Ministry with the name of the individual, the date of birth, the address and his or her health card number. The Ministry denied

access to the requested information in both cases pursuant to sections 18(1)(c) and (d) of the *Act*.

Neither appeal could be settled by mediation. Notice that an inquiry was being conducted to review the decisions of the Ministry was sent to the Ministry and the appellants. The parties were also asked to comment on the application, if any, of section 21 of the *Act* to the information at issue in these appeals. Representations were received from the Ministry, and the Ontario Medical Association (the OMA), acting as agent for one of the appellants.

The scope of the appeals was limited to the "version codes" of three named individuals. These individuals were patients who were treated by physicians who were unable, for various reasons, to ascertain the patients' version codes. Accordingly, the physicians' claims for reimbursement for medical services provided to these patients were rejected by the Ministry.

### ORDER

The Ministry was ordered to disclose the requested information.

The information requested was accessed through the Ministry's Registered Persons Database. The record which contained the information requested was the patients' Registrant Detail Inquiry.

The version code itself was a one or two uppercase alpha character, for example "A" or "CC". It was located in the lower right-hand corner of the health card. A version code is assigned to a health number whenever a replacement health card is issued. Replacement cards are issued when a registered person turns 65, requests a new card to reflect a name change or correction, or reports that their original card has been lost, stolen or damaged. There is no connection

between the assignment of a particular version code and the reason for its assignment; version codes are assigned on a completely random, computer-generated basis.

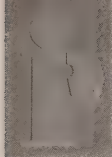
Essentially, the concept of the version code is simply a method to make any replacement card different from the original.

Inquiry Officer Fineberg concluded that there was nothing inherent in the version code itself that would allow one to identify any particular individual. In fact, the version codes responsive to the requests were the same for two of the individuals. Accordingly, the requested information did not fall within the definition of "personal information" in section 2(1) of the *Act* and, consequently, there could not be an unjustified invasion of personal privacy within the meaning of section 21 of the *Act*.

With respect to the exemptions claimed under sections 18(1)(c) and (d) of the *Act*, Inquiry Officer Fineberg found that there was no evidence to establish a clear and direct linkage between the disclosure of the requested version codes in these appeals and the suggested harm, i.e., the payment of fraudulent claims.

Moreover, if, as some Ministry personnel have suggested before the Legislative Assembly, the vast majority of improper version code claims are not due to fraud but to out-of-date records, then there is no economic harm to the Ministry resulting from disclosure of the version codes. Rather, the Ministry will receive a financial benefit for non-payment of legitimate claims and the health care providers will assume the costs in situations in which, for various reasons, they cannot ascertain the version code of patients whom they have treated.





The discretionary exemptions provided by sections 18(1)(c) and/or (d) of the *Act* were held not to apply to the requested information.

**SECTIONS CONSIDERED**

18(1)(c) and (d), 2(1), 21

**PREVIOUS ORDERS CONSIDERED**

P-257, M-202

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**ORDER P-591**

**APPEAL P-9300292**

Institution: Management Board Secretariat

DECEMBER 1, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER P-592**

**APPEAL P-9300132**

Institution: Ministry of Health

DECEMBER 1, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

delegation of power or duty • advice to government • third party information • solicitor client privilege • appeal generated records • reasonable steps to locate records

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**ORDER P-593**

**APPEAL P-9300387**

Institution: Ministry of Health

DECEMBER 2, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • advice to government

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**ORDER P-594**

**APPEAL P-9300382**

Institution: Ministry of the Solicitor General and Correctional Services

DECEMBER 2, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • unjustified invasion of • personal privacy

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**ORDER P-595**

**APPEALS P-9200385,  
P-9200386, P-9300200**

Institution: Ministry of Housing

DECEMBER 3, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • evaluative or opinion material • reasonable steps to locate record

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**ORDER P-596**

**APPEAL P-9300318**

Institution: Ministry of Health

DECEMBER 3, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-597**

**APPEAL P-9200784**

Institution: Ministry of the Solicitor General and Correctional Services

DECEMBER 8, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

witness statements • investigation • *Corrections Act* • personal information • compiled as part of investigation • pecuniary or other harm • highly sensitive • supplied in confidence • presumption of • unjustified invasion of • another individual's personal privacy • advice to government • law enforcement • escape from custody

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**ORDER P-598**

**APPEAL P-9300030**

Institution: Ontario Human Rights

Commission

DECEMBER 8, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

law enforcement • report • investigation • *Ontario Human Rights Code* • advice to government • personal information • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy

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**ORDER P-599**

**APPEAL P-9300252**

Institution: Workers' Compensation Board

DECEMBER 15, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-600**

**APPEAL P-9300430**

Institution: Ministry of the Attorney General

DECEMBER 15, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • compiled as part of investigation • presumption of • unjustified invasion of • another individual's personal privacy

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**ORDER P-601**

**APPEAL P-9300209**

Institution: Sheridan College of Applied Arts and Technology

DECEMBER 15, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to locate record

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## ORDER P-602 APPEAL P-9300381

Institution: Ministry of the Solicitor General  
and Correctional Services

DECEMBER 16, 1993

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

personal information • highly sensitive  
• individual's reputation • unjustified  
invasion of • another individual's personal  
privacy • reasonable steps to locate record

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## ORDER P-603 APPEAL P-9200677

Institution: Workers' Compensation Board

DECEMBER 21, 1993

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

economic and other interests • plans  
• advice to government • performance or  
efficiency report • law enforcement  
• security concerns

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## ORDER P-604 APPEAL P-9200586

Institution: Ministry of Economic  
Development and Trade

DECEMBER 31, 1993

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

Commissioner • powers and duties  
• award of costs • solicitor client privilege  
• in contemplation of or for use • in giving  
legal advice • cabinet records • substance  
of deliberations • consultation among  
ministers • third party information  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • similar  
information • no longer supplied  
• personal information • opinions or views

The Ministry of Industry, Trade and  
Technology (now the Ministry of Eco-  
nomic Development and Trade) received  
a request under the *Freedom of Infor-*

*mation and Protection of Privacy Act* (the  
*Act*) for access to all information pertain-  
ing to loans or grants provided by the  
Ministry to a named corporation from  
1970 to the date of the request. In  
particular, the requester sought records  
pertaining to policy discussions and  
proposals submitted by this corporation  
to the Ministry respecting the establish-  
ment of a technology centre.

The Ministry decided to release some of  
the documents to the requester in their  
entirety. The Ministry, however, denied  
access, either in whole or in part, to 35  
records pursuant to sections 13(1),  
17(1)(a), (b) and (c), 19 and 21 of the *Act*.

### ORDER

The decision of the Ministry was par-  
tially upheld.

In its representations, the corporation  
requested that the terms of the order  
require that the appellant pay the corpo-  
ration's legal costs of the appeal. In re-  
sponding to this request, Assistant  
Commissioner Glasberg first pointed out  
that it is a general principle of administra-  
tive law that an administrative tribunal  
possesses only those powers which it has  
been granted by its enabling statute, by  
necessary implication or through some  
statute of general application. The Assist-  
ant Commissioner then went on to ex-  
amine the provisions of the *Act* to deter-  
mine whether such a power has been  
accorded to the Commissioner expressly  
or by necessary implication.

Following a review of the legislation, he  
found that the *Act* does not expressly  
provide the Commissioner or his dele-  
gate with the authority to award costs to  
a party in an appeal. He then considered  
whether an implied power of this nature  
could be found under sections 54(1) and  
(3) of the legislation. These provisions  
authorize the Commissioner to make an

order disposing of the issues raised in the  
appeal and to incorporate any terms and  
conditions that the Commissioner con-  
siders appropriate.

The Assistant Commissioner pointed out,  
however, that these broadly worded pro-  
visions must be read in conjunction with  
section 52(1) of the *Act*, which outlines  
the scope of the duty of the Commis-  
sioner to conduct an inquiry. This provi-  
sion specifies that, where a settlement is  
not effected, the Commissioner shall  
conduct an inquiry to review the head's  
decision. The Assistant Commissioner  
found that, based on the wording of this  
section, any terms or conditions attached  
to an order must bear directly on the  
contents of the head's decision or the  
process by which that decision was is-  
sued. The Assistant Commissioner con-  
cluded that since the question of whether  
costs should be awarded in a proceeding  
is not directly related to the review of a  
head's decision, the power of the Commis-  
sioner to award costs cannot be implied  
from the provisions of the *Act*.

Finally, the Assistant Commissioner  
found that there is no statute of general  
application, to which the *Act* is subject,  
which provides the Commissioner with  
the power to award costs. On this basis,  
the Assistant Commissioner came to the  
conclusion that the Office of the Commis-  
sioner does not possess the requisite au-  
thority to make an award of costs in the  
course of issuing an order under the *Act*.

The Assistant Commissioner found that  
two of the three records in which the  
section 19 exemption was claimed were  
prepared by one Crown counsel for use  
by another Crown counsel in giving legal  
advice and qualified for exemption un-  
der Branch 2 of the section 19 exemp-  
tion. The third record for which the  
section 19 exemption was claimed con-  
sisted of a letter sent to the Ministry's



Director of Human Resources by an external law firm. The Ministry had commissioned this firm to conduct an inquiry into the activities of a representative of a named third party, respecting the corporation's proposal and the manner in which Ministry staff responded to the actions of that party.

After referring to the contents of Order 210, the Assistant Commissioner concluded that the letter did not contain a legal opinion which is necessary for a finding that a record constitutes legal advice. This conclusion was reached based on the fact that the letter made no reference to any statutory provisions or case-law, nor did it attempt to connect the present state of the law with the conclusions which were reached in the document. Rather, this record represented an internal investigation report, as opposed to a legal opinion.

The Assistant Commissioner then went on to consider the claim for exemption under section 17(1)(b) of the *Act*. Following a review of the law in the area, he pointed out that in order to meet the requirements of the third part of the section 17(1)(b) test, the Ministry and/or the affected person must demonstrate, through the provision of detailed and convincing evidence, that:

1. *The disclosure of the information in the records could reasonably be expected to result in similar information no longer being supplied to the institution; and*
2. *It is in the public interest that similar information continue to be supplied to the institution in this fashion.*

The Assistant Commissioner held that disclosure of the type of information at issue could provide an applicant's competitors with an unfair and, at times, significant business advantage. He went on to state that, if such information were

subject to release under the *Act*, this approach could reasonably be expected to create an environment where other prospective loan applicants would no longer supply information to the Ministry which was as frank and detailed as would otherwise be the case.

Assistant Commissioner Glasberg then considered whether it was in the public interest that such information continue to be supplied to the Ministry from such loan applicants. He concluded that the need to promote economic growth and to create jobs represent two of the Ministry's key objectives. The provision of financial assistance to private sector enterprises represents one vehicle through which the Ministry can achieve this goal. Given the limited fiscal resources which are available for such programs, it is crucial that the process for allocating loan funds is based on the highest quality information which the Ministry can obtain. Information of this character will, in turn, only be forthcoming where applicants have the confidence to know that such materials will not be subject to disclosure outside the Ministry.

For these reasons, the Assistant Commissioner found that there is a strong public interest in ensuring that detailed and frank information from prospective loan applicants continue to be supplied to the Ministry.

As a result, the Assistant Commissioner found that the third part of the section 17(1)(b) test had been satisfied with respect to the majority of the records at issue in the appeal.

#### SECTIONS CONSIDERED

2, 12(1), 17(1), 19, 21(1)

#### PREVIOUS ORDERS CONSIDERED

36, 49, 60, 73, 206, 210, P-218, P-219, P-228, P-241, P-323, P-329, P-376, P-377, P-424, P-472, P-529

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### ORDER P-605 APPEAL P-9300151

Institution: Stadium Corporation of Ontario Limited

JANUARY 12, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

advice to government • third party information • economic and other interests

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### ORDER P-606 APPEAL P-9300436

Institution: Liquor Control Board of Ontario

JANUARY 12, 1994

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

personal information • highly sensitive • presumption of • unjustified invasion of • another individual's personal privacy

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### ORDER P-607 APPEAL P-9300368

Institution: Ontario Hydro

JANUARY 12, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

third party information • financial • commercial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • undue loss or gain • public interest override

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### ORDER P-608 APPEAL P-9300429

Institution: Ministry of Environment and Energy

JANUARY 12, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

fees • estimate • fee waiver • Member of Legislative Assembly • public health or safety



## ORDER P-609\* APPEAL P-9300319

Institution: Ministry Of Environment and Energy

JANUARY 12, 1994

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

third party information • “supplied” • “in confidence” • reasonable expectation of • harm • undue loss or gain • civil litigation • affected person • whether able to raise exemption not relied upon by institution

The Ministry of Environment and Energy (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the contamination of soil in the vicinity of a named property. After communicating with the affected person, the Ministry decided to disclose the record. The affected person appealed the Ministry's decision to disclose.

### ORDER

The Ministry's decision to disclose was upheld.

The record identified as responsive to the request consisted of an 11-page Agreement, dated June 22, 1990, entered into between the Ministry and the owner of the property (the company) respecting the clean up of soil in the area.

Assistant Commissioner Glasberg had to determine whether the mandatory exemption provided by sections 17(1)(a), (b) and (c) of the *Act* applied to the Agreement in question. He found that, based on the representations provided to him and the circumstances of this case, the terms and conditions contained in the Agreement were negotiated between the Ministry and the company, and therefore, the information did not qualify as

originally having been “supplied” for the purposes of section 17(1) of the *Act* (Orders 36, 87, 203, P-219, P-228, P-251, P-263 and P-581). He then pointed out that the failure to satisfy any component of the three-part test means that the section 17(1) exemption will not apply. In deference to the representations made by the company, the Assistant Commissioner considered whether the information contained in the Agreement was supplied in confidence and whether the release of the Agreement would result in any of the harms outlined in this section.

The Assistant Commissioner noted that paragraph 13 of the Agreement specified that the approval of the Lieutenant Governor in Council is required before the Agreement will take effect. Paragraph 14 provided that neither party was permitted to disclose the terms of the Agreement before the requisite approval under paragraph 13 was obtained. He found that while there was an expectation that the terms of the Agreement would be kept confidential at the time that the document was drafted, that expectation was time limited and, by virtue of paragraphs 13 and 14 of the document, no longer existed once the approval of the Lieutenant Governor had been obtained.

Assistant Commissioner Glasberg then considered whether the company has met the third part of the section 17(1) test. The company submitted that it was involved in litigation with the original requester, but that it has not yet been served with a statement of claim. According to the company, the disclosure of the Agreement, which it viewed as being subject to privilege, could reasonably be expected to interfere with the rights and privileges of the company in the litigation pursuant to section 17(1)(a) of the *Act*. The company also maintained that, should the Agreement be released, the original requester would obtain an un-

due gain under section 17(1)(c) of the *Act* in that this party would likely not have received access to this same document under the civil litigation process.

The Assistant Commissioner pointed out that the relationship between the access provisions contained in the *Act* and the civil litigation process, is addressed in section 64(1) of the *Act*. This provision states that:

*This Act does not impose any limitation on the information otherwise available by law to a party to litigation.*

He then went on to endorse the comments made in Order 48. In this order, the application of section 64(1) was cogently summarized by former Commissioner Sidney B. Linden where he made the following point:

*... Had the legislators intended the Act to exempt all records held by government institutions whenever they are involved as a party in a civil action, they could have done so through use of specific wording to that effect. No such exemption exists, and, in my view, subsection 14(1)(f) or section 64 cannot be interpreted so as to exempt records of this type without offending the purposes and principles of the Act.*

Assistant Commissioner Glasberg stated that the *Act* contains an exhaustive list of the exemptions which are available to an institution should it wish to deny access to a particular record. As a result, there does not exist a discrete settlement privilege under the *Act*, and litigation privilege is only available pursuant to the discretionary exemption contained in section 19 of the *Act*. The Assistant Commissioner rejected the company's position that the privileged status of the Agreement in another context is sufficient to trigger the application of either section 17(1)(a) or (c) of the *Act*. Since

the company had not provided any other evidence to indicate that the harms contemplated under these sections will likely come to pass, the Assistant Commissioner found that the third part of the section 17(1) test also had not been satisfied.

**SECTION CONSIDERED**  
17

**PREVIOUS ORDERS CONSIDERED**  
36, 48, 87, 203, P-218, P-219, P-228, P-251, P-257, P-263, P-451, P-472, P-581

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**ORDER P-610**  
**APPEAL P-9300188**

Institution: Ministry of Health  
JANUARY 13, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

tender • custody or control • third party information • technical • commercial • financial • "supplied" • "in confidence" • reasonable expectation of • harm • competitive position • similar information • no longer supplied

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**ORDER P-611**  
**APPEAL P-9200821**

Institution: Ontario Film Development Corporation  
JANUARY 17, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • names • recommendations or evaluations • supplied in confidence • relevant to • fair determination of rights • presumption of • unjustified invasion of • personal privacy

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**ORDER P-612\***  
**APPEAL P-9300346**

Institution: Ministry of the Solicitor General and Correctional Services  
JANUARY 17, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • compiled as part of investigation • pecuniary or other harm • supplied in confidence • presumption of • unjustified invasion of • another individual's • personal privacy

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**ORDER P-613**  
**APPEALS P-9300192,**  
**P-9300479**

Institution: Ministry of the Solicitor General and Correctional Services  
JANUARY 24, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

police records • crown brief • solicitor client privilege • in contemplation of or for use in litigation • personal information • unjustified invasion of • presumption of • compiled as part of investigation • public scrutiny • public interest override

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**ORDER P-614**  
**APPEAL P-9300323**

Institution: Ministry of the Solicitor General and Correctional Services  
JANUARY 24, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

investigation report • workplace harassment • personal information • highly sensitive • supplied in confidence • unjustified invasion of • another individual's personal privacy

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**ORDER P-615**  
**APPEAL P-9300345**

Institution: Ministry of the Solicitor General and Correctional Services  
JANUARY 24, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

investigation report • workplace harassment • personal information • highly sensitive • supplied in confidence • unjustified invasion of • another individual's personal privacy

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**ORDER P-616\***  
**APPEAL P-9300325**

Institution: Ontario Human Rights Commission  
JANUARY 28, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • law enforcement • reasonable expectation of harm • interfere with investigation

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**ORDER P-617**  
**APPEAL P-9400011**

Institution: Ministry of Transportation  
JANUARY 28, 1994  
(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

time extension • time limit for • responding to request for access

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**ORDER P-618**  
**APPEAL P-9300389**

Institution: Sheridan College of Applied Arts and Technology  
FEBRUARY 2, 1994  
(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

reasonable steps to locate record

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**ORDER P-619**  
**APPEAL P-9300432**

Institution: Ministry of Health  
FEBRUARY 1, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

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## ORDER P-620 APPEAL P-9300456

Institution: Ministry of the Attorney General  
FEBRUARY 2, 1994  
(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • unjustified invasion  
of • personal privacy

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## ORDER P-621 APPEAL P-9300128

Institution: Ministry of Consumer and  
Commercial Relations  
FEBRUARY 2, 1994  
(INQUIRY OFFICER HALE)

### KEYWORDS

*Real Estate and Brokers' Act* • personal  
information • compiled as part of  
investigation • employment history  
• relevant to • fair determination of rights  
• supplied in confidence • unjustified  
invasion of • personal privacy

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## ORDER P-622 APPEAL P-9300313

Institution: Ministry of the Attorney General  
FEBRUARY 3, 1994  
(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • unjustified invasion  
of • another individual's personal privacy

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## ORDER P-623 APPEAL P-910934

Institution: Ministry of Health  
FEBRUARY 3, 1994  
(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

*Mental Health Act* • application of the *Act*  
• Commissioner • powers and duties  
• production of documents

The Ministry of Health (the Ministry)  
received a request under the *Freedom of*

*Information and Protection of Privacy Act*  
(the *Act*) for access to records relating to  
a named psychiatric patient, who was  
detained at a psychiatric hospital as a  
result of having been found not guilty by  
reason of insanity on two charges of  
attempted murder. The requester was  
seeking access to information pertaining  
to the conditions of the patient's deten-  
tion and/or release.

The Ministry had denied access to the  
records pursuant to sections 65(2)(a) and  
(b) of the *Act*. The requester appealed the  
Ministry's decision, and the Ministry  
was asked to provide the IPC with a copy  
of the records pertaining to the appeal.  
To date, a copy of the record has not been  
provided to the IPC.

### ORDER

The Ministry was ordered to produce all  
records which respond to the request  
relating to this appeal.

The Ministry, in its submissions, argued  
that the records are not accessible under  
the *Act* pursuant to section 65(2) of the  
*Act* and, accordingly, the *Act* has no  
application to the records. The Ministry  
also indicated that section 35 of the  
*Mental Health Act* (the *MHA*) prohibits  
the Ministry from providing the records  
to the IPC.

After examining the purpose of the *Act*,  
which is to provide access to information  
in accordance with the principle that  
"decisions on the disclosure of govern-  
ment information should be reviewed  
independently of government", the In-  
quiry Officer concluded that, in keeping  
with this principle, while the Legislature  
clearly intended that clinical records  
should fall outside the purview of the *Act*,  
the Legislature did not intend to have the  
threshold issue of whether or not records  
fall within the scope of section 65(2)  
determined by a non-independent body,

such as the Ministry, whose decision  
would not be reviewable.

The Inquiry Officer found that the  
Commissioner (or his delegate) does have  
the power to compel the production of  
records claimed to be covered by section  
65(2). This power to compel initially  
would be exercised for the limited pur-  
pose of determining whether or not the  
records fall within the scope of section  
65(2) of the *Act*. If, having reviewed the  
records, a decision maker determines  
that the Ministry's claim is correctly made,  
pursuant to section 65(2), the records  
would be returned to the Ministry and  
the appeal would be closed, since the  
Commissioner would not have the juris-  
diction to conduct a further inquiry.  
However, if a decision maker determines  
that an institution's claim is not validly  
made with respect to some or all of the  
records (i.e., that section 65(2) does not  
apply to some or all of the records), then  
a decision maker will be required to  
proceed with the inquiry and to deter-  
mine the application of the *Act* to the  
records.

Inquiry Officer Big Canoe then dealt  
with the Ministry's submission that it is  
prohibited by section 35 of the *MHA*  
from providing the records to the  
Commissioner. After examining the rel-  
evant subsections of this section, she  
concluded that an order of the Commis-  
sioner (or his delegate) requiring produc-  
tion of a record fits within the ambit of  
section 35(5) of the *MHA*. Furthermore,  
Inquiry Officer Big Canoe found that  
the *MHA* would require a psychiatric  
facility to disclose the records, in the face  
of an order of the Commissioner (or his  
delegate) to produce the records, unless it  
can be shown that the harms described in  
section 35(6) and (7) would be likely to  
result from the disclosure.



**SECTIONS CONSIDERED**

1(a)(iii), 65(2)

**OTHER LEGISLATION CONSIDERED**

*Mental Health Act*, sections 8 and 35

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER P-624**

**APPEAL P-9300242**

Institution: Ministry of Agriculture and Food

FEBRUARY 8, 1994

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

solicitor client privilege • legal accounts  
• purposes of the *Act* • legal advice • in  
contemplation of litigation

The Ministry of Agriculture and Food (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of all paperwork within a specific timeframe relating to an enrolment in the Ontario Farm Adjustment Assistance Program (OFAAP).

The appeal focused on the interpretation of the section 19 exemption with respect to records that the Ministry described as "legal accounts".

**ORDER**

The head's decision was partially upheld.

Assistant Commissioner Glasberg commenced his analysis by reflecting on the characteristics of a legal account as a discrete type of document. He stated that a legal account is essentially an invoice which itemizes the services rendered by a law firm and the amounts charged for these services. From this perspective, a legal account is no different than an invoice for services remitted to an institution by a consultant or other category of professional. The distinguishing feature of a legal account is that it is issued by a

law firm to its client and relates to the provision of legal services.

The Assistant Commissioner also pointed out that, although a legal account arises out of a solicitor client relationship, this record category differs qualitatively from legal opinions or other communications which purport to provide legal advice from a lawyer to his or her client (and which have traditionally attracted the solicitor client privilege at common law). To put the matter somewhat differently, the essence of a legal opinion is that it provides legal advice to a client with respect to discrete legal issues. The essence of a legal account is that it requests payment for legal services previously rendered.

The Assistant Commissioner also noted that legal accounts do not always assume the same form. In some cases, the breakdown of services provided is extremely detailed such that a review of the account would reveal the substance of the legal advice requested or provided, or the legal strategies pursued. On the other hand, some legal accounts contain nothing more than a general statement that legal work was undertaken and that a specific global amount is payable. In these latter situations, the fact that the invoice is a legal account can sometimes only be gleaned by referring to the letterhead on the statement.

The Assistant Commissioner then reviewed the manner in which legal accounts had been treated at common law. Based on his review of the relevant cases, the Assistant Commissioner concluded that the common law position on whether legal accounts, in whole or in part, are protected by the solicitor client privilege is still unclear. That being the case, he concluded that his determination of whether section 19 applies to the legal accounts at issue in this appeal must be

based exclusively on the wording and the intent of the *Act*.

The Assistant Commissioner then addressed the Ministry's submission that the section 19 exemption should be interpreted liberally with a view towards protecting the legal accounts from disclosure. He concluded, however, that section 19 of the *Act* (like every other discretionary exemption contained in the legislation) must be interpreted according to the stated purposes of the legislation. These underlying principles, set out succinctly in section 1(a) of the *Act*, state that information should be available to the public and that the necessary exemptions from the right of access should be limited and specific.

The Assistant Commissioner expressed the view that this provision reveals a legislative intent that discretionary exemptions should be interpreted narrowly and that it is the obligation of institutions to err on the side of releasing information. Based on an analysis of this section, he was unable to accept the fundamentally opposite submission advanced by the Ministry that section 19 should receive a broad and liberal interpretation.

The order next canvassed the Ministry's submission that the Office of the Commissioner does not have the authority to consider factors, other than those established at common law, to determine whether the contents of a record fall within the section 19 exemption. The Assistant Commissioner pointed out, that this position is inconsistent with the important principle of severance which is established in section 10(2) of the *Act*. This provision states that:

*Where an institution receives a request for access to a record that contains information that falls within one of the exemptions*

*under section 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.*

In the Assistant Commissioner's view, it is entirely consistent with the wording of this section for the Office of the Commissioner to articulate tests to determine when the contents of legal accounts should be subject to the severance principle.

The Assistant Commissioner then went on to adopt the test set out in Order M-213 for the treatment of these records. That is, for a legal account to qualify for exemption under section 12 of the *Act*, its contents must relate in a direct and tangible way to the seeking, formulating or provision of legal advice.

The Assistant Commissioner explained that, from a practical perspective, that test will be satisfied where the disclosure of the information contained in the account would reveal the subject(s) for which legal advice was sought, the strategy used to address the issues raised, the particulars of any legal advice provided or the outcome of these investigations. This approach reflects the fact that some information contained in a legal account may relate to the seeking, formulation or provision of legal advice, but also allows the principle of severance to be applied to the record in a predictable fashion.

The Assistant Commissioner then went on to review each of the legal accounts at issue. He noted that the accounts individually provide a tally of the hours spent and disbursements made by the law firms, as well as brief narratives of the steps taken to complete the assignments. In his view, the disclosure of the information contained in some of these accounts would neither reveal the subjects for which legal advice was sought, the legal advice

provided, the legal strategy pursued, nor the results obtained. On this basis, these legal accounts do not contain information which relates in a direct and tangible way to the seeking, formulating or provision of legal advice. The result is that these records are not protected from disclosure under the section 19 exemption.

The Assistant Commissioner also found, however, that portions of the narratives set out in the other legal accounts at issue would reveal this type of information. On this basis, he found that the disclosure of these excerpts were subject to exemption under Branch 1 of the section 19 exemption.

#### SECTION CONSIDERED

2, 19

#### OTHER LEGISLATION CONSIDERED

*Income Tax Act*, Section 232 (1)(e)

#### PREVIOUS ORDERS CONSIDERED

49, 126, 210, P-369, P-377, P-427, P-528, M-213

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### ORDER M-203 APPEAL M-9300068

Institution: Metropolitan Licensing Commission

OCTOBER 22, 1993

(INQUIRY OFFICER HALE)

#### KEYWORDS

fees • estimate • preparing record

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### ORDER M-204 APPEAL M-9200284

Institution: Town of Gananoque

OCTOBER 22, 1993

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

severance agreement • personal information • employment history • financial history • supplied in confidence • highly sensitive • individual's reputation

- public scrutiny • public confidence
- public interest override

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### ORDER M-205 APPEAL M-9200012

Institution: Niagara Regional Police Services Board

OCTOBER 26, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

deceased person • personal representative • administration of estate • personal information • compiled as part of investigation • presumption of • unjustified invasion of • personal privacy

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### ORDER M-206 APPEAL M-9100443

Institution: Welland County Roman Catholic Separate School Board

OCTOBER 26, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

deceased person • personal representative • administration of estate • personal information • compiled as part of investigation • employment history • public scrutiny • highly sensitive • relevant to • fair determination of rights • presumption of • unjustified invasion of • personal privacy • meeting • absence of the public • substance of deliberations • *Education Act* • reasonable steps to locate record

The Welland County Roman Catholic Separate School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a number of records held by the Board. The requester indicated that the records contained information about an individual, now deceased, who had been an employee of the Board (the deceased). The request was for a number of different categories of records.



Attached to the request was a copy of the last will and testament of the deceased, appointing his wife as the sole executrix of his will. The requester indicated that he was authorized to request the information on behalf of the executrix. The requester provided the Board with an authorization to that effect, signed by the executrix.

The Board's decision letter granted access to certain records and denied access to others. In addition to addressing other items raised by the appellant's request, it also stated that certain records did not relate to the administration of the estate and, therefore, section 54(a) of the *Act* did not provide the requester with a right of access to these documents.

#### ORDER

The Board's decision was upheld.

The Board, in its submissions, explained that the information which has been released to the appellant, including the personal file of the deceased, was information which related to the estate of the deceased. This included information concerning such things as entitlement to death benefits, life insurance and vacation pay. It refused to disclose the remaining records at issue on the basis that the records do not relate to the administration of the individual's estate.

Inquiry Officer Fineberg noted that it is clear from the wording of section 54(a) that for a personal representative of a deceased to exercise a right or power of the deceased, the exercise of that right or power must "relate to the administration of the individual's estate". As a result, the rights of a personal representative under section 54(a) are narrower than the rights of the deceased person. That is, the deceased will retain his or her right to

privacy except insofar as the administration of his or her estate is concerned.

In order to give effect to these rights, Inquiry Officer Fineberg stated that the phrase "relates to the administration of the individual's estate" in section 54(a) should be interpreted narrowly to include records relating to financial matters to which the personal representative requires access in order to wind up the estate. She found that the records at issue in this appeal contained precisely the type of sensitive personal information about the deceased which the other sections of the *Act* were designed to protect, and that the personal information at issue did not relate to the administration of the deceased's estate.

#### SECTIONS CONSIDERED

2(1), 6(1)(b), 6(2)(b), 14, 54(a)

#### PREVIOUS ORDERS CONSIDERED

P-256, P-294, P-433, P-434, M-64, M-84, M-96, M-98, M-102, M-143, M-170, M-184

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### ORDER M-207 APPEALS M-9300229, M-9300230, M-9300231, M-9300264

Institution: Metropolitan Toronto Police Services Board

OCTOBER 27, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

access procedure • request • facsimile transmission • *Interpretation Act*

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### ORDER M-208 APPEAL M-9200312

Institution: Corporation of the Townships of Belmont and Methuen

OCTOBER 29, 1993

(INQUIRY OFFICER HALE)

#### KEYWORDS

meetings • absence of the public  
• substance of deliberations • *Municipal Act* • reasonable steps to locate record

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### ORDER M-209 APPEAL M-9300303

Institution: Corporation of the Town of Dunnville

OCTOBER 29, 1993

(INQUIRY OFFICER HALE)

#### KEYWORDS

economic and other interests • reasonable expectation of harm • proposed plans or policies

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### ORDER M-210 APPEALS M-9200148, M-9200435, M-9300101

Institution: City of Toronto

NOVEMBER 3, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • employment history • unjustified invasion of • personal privacy • third party information  
• reasonable expectation of harm  
• competitive position • undue loss or gain  
• advice to government • economic and other interests • reasonable expectation of harm • plans or positions

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### ORDER M-211 APPEAL M-9200001

Institution: Regional Municipality of Niagara

NOVEMBER 4, 1993

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • unjustified invasion of • another individual's personal privacy  
• reasonable steps to locate record



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**ORDER M-212**  
**APPEAL M-9200394**

Institution: Municipality of Metropolitan Toronto

NOVEMBER 9, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • relevant to • fair determination of rights • highly sensitive  
• supplied in confidence • individual's reputation • unjustified invasion of  
• another individual's personal privacy  
• advice to government

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**ORDER M-213**  
**APPEAL M-9300109**

Institution: Board of Education for the Borough of East York

NOVEMBER 10, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

solicitor client privilege • accounts • legal advice • *Income Tax Act*

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**ORDER M-214**  
**APPEAL M-9200462**

Institution: Guelph Police Services Board

NOVEMBER 10, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • law enforcement  
• report • investigation

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**ORDER M-215**  
**APPEAL M-9300009**

Institution: Niagara Regional Police Services Board

NOVEMBER 10, 1993

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • another individual's personal privacy

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**ORDER M-216**  
**APPEAL M-9300242**

Institution: Metropolitan Toronto Police Services Board

NOVEMBER 10, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

reasonable steps to identify record  
• reasonable steps to locate record

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**ORDER M-217**  
**APPEAL M-9300018**

Institution: Corporation of the City of York

NOVEMBER 18, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • opinions or views  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy • public interest  
override • law enforcement • report

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**ORDER M-218**  
**APPEAL M-9300013**

Institution: City of Mississauga

NOVEMBER 19, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

fees • interim decision • fee estimate  
• search charges • preparation time  
• fee waiver • financial hardship

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**ORDER M-219**  
**APPEAL M-9200451**

Institution: Regional Municipality of Haldimand-Norfolk

NOVEMBER 19, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • meetings  
• substance of deliberations  
• *Municipal Act*

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**ORDER M-220**  
**APPEAL M-9300268**

Institution: Kingston Police Services Board

NOVEMBER 19, 1993

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

fees • fee waiver • public health or safety  
• financial hardship

The Kingston Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a large number of records of different types.

The appellant subsequently narrowed several aspects of his request.

Following receipt of this revised request, the Police issued a decision letter which indicated that access to some of the records requested would likely be denied under sections 8(1)(c) and (i) of the *Act*. The Police also provided the requester with a fee estimate of \$2,250, representing the time that it would take them to search for and prepare the relevant records pursuant to section 45(1)(a) of the *Act*. The Police also advised the requester of his right to request a waiver of the fees.

One of the grounds for which the requester sought a fee waiver was that such payment would cause financial hardship to him under section 45(4)(c) of the *Act*. The Police made the decision not to waive the fee and the requester appealed this decision to the Office of the Commissioner.

**ORDER**

The institution's decision was upheld.

Assistant Commissioner Glasberg initially pointed out that a number of previous orders had established that the person requesting a fee waiver has the responsibility of providing adequate



evidence to support a claim that such a waiver is appropriate (Orders P-476 and M-166).

In his representations, the appellant had provided evidence that he had a modest income and that his monthly expenses were also modest. The appellant did not, however, supply any evidence to the Police or the Office of the Commissioner respecting his asset holdings or his net worth. The Assistant Commissioner noted that without this type of information, it is not possible to determine whether the appellant has the financial resources to pay the fee for which he is requesting a waiver. For the purposes of this appeal, however, he was prepared to assume, without deciding the matter, that an expenditure of \$2,250 to obtain the records in question would cause a financial hardship to this appellant.

Having made this initial assumption, the Assistant Commissioner was then required to determine whether it was fair and equitable for the Police not to have waived payment of the fee in this particular case. In Order P-463, the Assistant Commissioner set out a number of factors to be considered in resolving these sorts of cases. These factors were: (1) the manner in which the institution attempted to respond to the appellant's request; (2) whether the institution worked with the appellant to narrow and/or clarify the request; and (3) whether the institution provided any documentation to the requester free of charge. In Order P-474, he added a fourth consideration: whether the appellant worked constructively with the institution to narrow the scope of the request.

The Assistant Commissioner noted that in Order M-166, Inquiry Officer Seife added several additional factors to this list. These included: (1) whether the request involves a very large volume of

records; (2) whether or not the appellant has advanced a compromise solution which would reduce the costs of processing the request; and (3) whether the waiver of the fee would shift an unreasonable burden of the cost of access from the appellant to the institution such that there would occur a significant interference with the operations of the institution.

The Assistant Commissioner then reflected on the applicability of these considerations to the facts of this appeal. He noted that the scope of the original request was massive, both in terms of the subject areas addressed and the time periods over which information was sought. He then went on to state that while it is true that, at the suggestion of the Police, the appellant clarified and/or narrowed his request somewhat, what remained was still a diffuse and very broad application for information. On this basis, the Assistant Commissioner was unable to conclude that the appellant had worked constructively with the Police to meaningfully narrow the scope of the request. Based on his review of the file, the Assistant Commissioner also concluded that the Police attempted to deal with the appellant's request in a constructive and responsible fashion.

For these reasons, the Assistant Commissioner found that this was not the kind of case where it would be appropriate to shift the cost of processing an access request from the requester to the institution, and that the decision of the Police not to waive the \$2,250 fee was based on fair and equitable grounds and, therefore, proper in the circumstances of this appeal.

#### SECTIONS CONSIDERED

17(2), 45(4), s. 8 of Reg. 823

#### PREVIOUS ORDERS CONSIDERED

P-463, P-474, P-476, M-166

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### ORDER M-221 APPEAL M-9300159

Institution: Kirkland Lake-Timiskaming  
Roman Catholic Separate School Board

NOVEMBER 19, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

relations with other governments  
• received in confidence • third party  
information • financial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm

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### ORDER M-222 APPEAL M-9300147

Institution: Stratford Police Services Board

NOVEMBER 23, 1993

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

police records • personal information  
• criminal history • compiled as part of  
investigation • relevant to • fair  
determination of rights • highly sensitive  
• presumption of • unjustified invasion of  
• personal privacy

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### ORDER M-223 APPEAL M-9300218

Institution: Durham Regional Police  
Services Board

NOVEMBER 24, 1993

(INQUIRY OFFICER SEIFE)

#### KEYWORDS

police records • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy • law enforcement  
• reasonable expectation of harm  
• interfere with law enforcement

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**ORDER M-224**  
**APPEAL M-9200464**

Institution: The Corporation of the  
Township of Cavan  
NOVEMBER 24, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

advice to government • personal  
information • identifiable individual

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**ORDER M-225**  
**APPEAL M-9300166**

Institution: Waterloo Regional Police  
Services Board  
NOVEMBER 25, 1993  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

witness statements • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• personal privacy

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**ORDER M-226**  
**APPEAL M-9200468**

Institution: Transit Windsor  
NOVEMBER 29, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

reasonable steps to identify record  
• reasonable steps to locate record

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**ORDER M-227**  
**APPEAL M-9300274**

Institution: City of Toronto  
NOVEMBER 30, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • right of correction

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**ORDER M-228**  
**APPEAL M-9300262**

Institution: Chatham Police Services Board  
DECEMBER 1, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER M-229**  
**APPEAL M-9300297**

Institution: Hamilton-Wentworth Regional  
Police Services Board  
DECEMBER 1, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

fees • fee waiver • financial hardship

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**ORDER M-230**  
**APPEAL M-9300017**

Institution: The Corporation of the City  
of York  
DECEMBER 1, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • opinions or views  
• relevant to • fair determination of rights  
• unjustified invasion of • personal privacy

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**ORDER M-231\***  
**APPEAL M-9300292**

Institution: Timiskaming Board of  
Education  
DECEMBER 3, 1993  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

negotiation records • third party  
information • "supplied"

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**ORDER M-232**  
**APPEAL M-9300093**

Institution: Toronto Hydro  
DECEMBER 3, 1993  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

employment competition • personal  
information • education history  
• employment history • evaluations  
• severance

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**ORDER M-233**  
**APPEAL M-9300149**

Institution: City of Scarborough  
DECEMBER 6, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • opinions or views  
• professional capacity • solicitor client  
privilege • in contemplation of or for use  
• in giving legal advice

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**ORDER M-234**  
**APPEAL M-9300200**

Institution: Regional Municipality of  
Ottawa-Carleton  
DECEMBER 6, 1993  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • right of correction

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**ORDER M-235**  
**APPEAL M-9300087**

Institution: City of Elliot Lake  
DECEMBER 7, 1993  
(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • public scrutiny  
• unjustified invasion of • personal privacy  
• public interest override • reasonable steps  
to locate record



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**ORDER M-236**  
**APPEAL M-9300080**

Institution: York Regional Police Services Board

DECEMBER 7, 1993

(INQUIRY OFFICER SEIFE)

**KEYWORDS**

personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • personal privacy  
• fees • fee estimate • preparing record

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**ORDER M-237**  
**APPEAL M-9300067**

Institution: City of Toronto

DECEMBER 8, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • in contemplation of or for use • giving legal advice

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**ORDER M-238**  
**APPEAL M-9300105**

Institution: City of Toronto

DECEMBER 8, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • burden of proof

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**ORDER M-239**  
**APPEAL M-9300171**

Institution: The Corporation of the Township of Maidstone

DECEMBER 9, 1993

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-240**  
**APPEAL M-9200163**

Institution: Metropolitan Toronto Police Services Board

DECEMBER 14, 1993

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • unjustified invasion of • another individual's personal privacy  
• law enforcement • reasonable expectation of harm • reasonable steps to locate record

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**ORDER M-241**  
**APPEAL M-9300255**

Institution: City of North York

JANUARY 5, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

management agreement • meeting • in camera • substance of deliberations

The City of North York (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the management agreement between the North York Performing Arts Centre Corporation (the Corporation) and the Live Entertainment Corporation of Canada (the affected party) for the operation of the North York Performing Arts Centre. The Corporation was established pursuant to the *City of North York Act*. All of the members of the Board of Directors of the Corporation are "appointed by or under the authority of the Council of the City of North York", and so, for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the Corporation is deemed to be "a part of the municipal corporation".

The City denied access to the record pursuant to sections 6(1)(b), 8(1)(i),

10(1)(a), 10(1)(b), 10(1)(c), 11(a), 11(c), 11(d), 11(f) and 12 of the *Act*.

Mediation was not successful and notice that an inquiry was being conducted to review the City's decision was sent to the City, the appellant and the affected party. Representations were received from all parties. In its representations, the City stated that it was no longer relying upon the exemption contained in section 12 of the *Act*.

**ORDER**

The decision of the City was upheld.

The record at issue in this appeal was a 58-page management agreement and 12 schedules which were appended thereto.

In order to rely on section 6(1)(b), the City must establish that:

1. *A meeting of a council, board, commission or other body or a committee of one of them took place; and*
2. *A statute authorizes the holding of such a meeting in the absence of the public; and*
3. *The disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.*

[Orders M-64, M-98, M-102 and M-219]

Inquiry Officer Hale adopted the definition of the words "substance" and "deliberations" expressed by Assistant Commissioner Glasberg in Orders M-184 and M-196.

In Order M-196, Assistant Commissioner Glasberg considered the meaning of the words "substance" and "deliberations" in the context of the interpretation of section 6(1)(b) of the *Act*. He held as follows:

*The Concise Oxford Dictionary, 8th edition, defines "substance" as the "theme or subject" of a thing. Having reviewed the contents of the agreement and the representations provided to me, it is my view that the "theme or subject" of the in camera meeting was whether the terms of the retirement agreement were appropriate and whether they should be endorsed.*

In Order M-184, which involved a request for an early retirement agreement, Assistant Commissioner Glasberg had occasion to interpret the term "deliberations", which is also found in section 6(1)(b) of the *Act*. He stated:

*... In my view, deliberations, in the context of section 6(1)(b), refer to discussions which were conducted with a view towards making a decision. Having carefully reviewed the contents of the Minutes of Settlement, I am satisfied that the disclosure of this document would reveal the actual substance of the discussions conducted by the Board, hence its deliberations, or would permit the drawing of accurate inferences about the substance of those discussions ...*

Inquiry Officer Hale found that all three components of the test had been satisfied, and that the management agreement was properly exempt from disclosure under section 6(1)(b) of the *Act*. In addition, Inquiry Officer Hale was unable to find that the subject matter of Council's deliberations on May 30, 1990 related to a sufficient degree to the subject matter of Council's deliberations on May 29, 1991. Therefore, the exception provided by section 6(2)(b) of the *Act* did not apply to the management agreement which was the subject of this appeal.

#### SECTIONS CONSIDERED

6

#### OTHER STATUTES CONSIDERED

section 55 of the *Municipal Act*, sections 8(2)(c) and (d) of the *City of North York Act*

#### PREVIOUS ORDERS CONSIDERED

M-64, M-98, M-102, M-184, M-196, M-219

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### ORDER M-242 APPEAL M-9300209

Institution: City of Cornwall

JANUARY 7, 1994

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

third party information • economic or other interests • competitive position  
• public interest override

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### ORDER M-243 APPEAL M-9300145

Institution: Metropolitan Toronto Police Services Board

JANUARY 12, 1994

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

police records • investigation • report  
• deceased person • personal representative  
• administration of estate • *Estates Administration Act* • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy  
• reasonable steps to locate record

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### ORDER M-244 APPEAL M-9300130

Institution: Town of Rayside-Balfour

JANUARY 13, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • law enforcement  
• investigation • confidential source

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### ORDER M-245 APPEAL M-9300298

Institution: Metropolitan Toronto Police Services Board

JANUARY 13, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

law enforcement • report • personal information • compiled as part of investigation • presumption of  
• unjustified invasion of • another individual's personal privacy

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### ORDER M-246 APPEAL M-9200469

Institution: The Corporation of the Town of Whitby

JANUARY 13, 1994

(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

reasonable steps to locate record • law enforcement • confidential source  
• Municipal Councillor

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### ORDER M-247 APPEAL M-9300317

Institution: Hamilton-Wentworth Regional Police Services Board

JANUARY 17, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

personal information • law enforcement  
• investigation • report

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### ORDER M-248 APPEAL M-9300188

Institution: City of Toronto

JANUARY 17, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

reasonable steps to locate record

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**ORDER M-249****APPEAL M-9300184**

Institution: Marathon Police Services Board

JANUARY 19, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

police record • personal information  
• compiled as part of investigation  
• necessary to continue investigation  
• presumption of • unjustified invasion of  
• personal privacy • public interest  
override

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**ORDER M-250****APPEAL M-9300158**

Institution: City of Toronto

JANUARY 20, 1994

(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

tender • third party information • financial  
• commercial • "supplied" • "in  
confidence" • reasonable expectation of  
• harm • competitive position

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**ORDER M-251****APPEAL M-9300115**

Institution: Toronto Transit Commission

JANUARY 21, 1994

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • employment  
history • highly sensitive • supplied in  
confidence • individual's reputation  
• unjustified invasion of • another  
individual's personal privacy

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**ORDER M-252****APPEAL M-9300406**

Institution: The Corporation of the City of Oshawa

JANUARY 24, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

fees • estimate • fee waiver • public health  
or safety

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**ORDER M-253****APPEAL M-9300443**

Institution: Metropolitan Toronto Police Services Board

JANUARY 26, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

police records • personal information  
• compiled as part of investigation  
• presumption of • unjustified invasion of  
• another individual's personal privacy

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**ORDER M-254****APPEAL M-9300401**

Institution: City of Scarborough

JANUARY 27, 1994

(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-255****APPEAL M-9300108**

Institution: Metropolitan Separate School Board [Toronto]

FEBRUARY 1, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-256****APPEAL M-9300058**

Institution: Hornepayne Board of Education

FEBRUARY 1, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • unjustified invasion  
of • another individual's personal privacy

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**ORDER M-257****APPEAL M-9200270**

Institution: Metropolitan Licensing Commission

FEBRUARY 2, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

solicitor client privilege • in contemplation  
of or for use • in litigation • personal  
information • employment history  
• relevant to • fair determination of rights  
• supplied in confidence • highly sensitive  
• unjustified invasion of • another  
individual's personal privacy

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**ORDER M-258****APPEAL M-9200278**

Institution: Toronto Board of Education

FEBRUARY 4, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • law enforcement  
• internal investigation • solicitor client  
privilege • legal advice • in contemplation  
of or for use • in litigation • third party  
information • commercial • financial  
• "supplied" • "in confidence" • reasonable  
expectation of • harm • similar  
information • no longer supplied  
• competitive position

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**ORDER M-259****APPEAL M-9300416**

Institution: Metropolitan Separate School Board [Toronto]

FEBRUARY 4, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

content of decision letter



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## ORDER M-260 APPEAL M-9300113

Institution: Belleville Police Services Board  
FEBRUARY 4, 1994  
(INQUIRY OFFICER FINEBERG)

### KEYWORDS

personal information • solicitor client  
privilege • waiver

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## ORDER M-261 APPEAL M-9400047

Institution: Municipality of Metropolitan  
Toronto  
FEBRUARY 7, 1994  
(INQUIRY OFFICER HALE)

### KEYWORDS

time extension • responding to request for  
access

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## ORDER M-262 APPEALS M-9300371, M-9300379, M-9300380, M-9300382, M-9300383, M-9300984, M-9300405

Institution: Metropolitan Separate School  
Board [Toronto]  
FEBRUARY 7, 1994  
(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

personal information • financial  
transactions • professional capacity

The Metropolitan Separate School Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the expense account sheets, including attachments and receipts, and the credit card statements for seven named employees of the Board, covering various specified time periods.

### ORDER

The Board was ordered to disclose the records.

The records consisted of the computer print-outs, bills and receipts of the named employees of the Board. The appellant had stated that he is only pursuing access to expenses incurred while the individuals were engaged in Board activity for which claims were later made. He was not seeking access to the actual credit card numbers. Consequently, the credit card numbers were not at issue.

The Board submitted in its representations that sections 11(c) and (d) of the *Act* "might" apply to some of the information contained in the records. These sections are discretionary exemptions. The Board did not cite these sections in its decision letter to the appellant as the basis for exempting any of the records and only raised them in its representations by stating that the sections "might" apply. As a result, Inquiry Officer Big Canoe did not address these sections in this order.

After having carefully reviewed the sample records as well as the representations provided to her, the Inquiry Officer did not find any information to satisfy her that the information contained in the records relates to "personal expenses". Therefore, it was her opinion that the records at issue relate to expenses incurred by employees of the Board in their employment capacity and were not the personal information of the employees for the purposes of the *Act*.

In a postscript to her order, Inquiry Officer Big Canoe pointed out that in two of these appeals, the subject of the request was also the person who made the decision to deny access to the records. She indicated that while there may not have been an actual conflict of interest present in these particular appeals, she recommends that a delegation of the head's powers under the *Act* contemplate the possibility of conflict of interest

scenarios, whether real or perceived, and provide for alternate decision makers in those instances.

### SECTIONS CONSIDERED

2

### PREVIOUS ORDERS CONSIDERED

P-326, P-328, P-329, P-333, P-377,  
M-71, M-74, M-106, M-107, M-108

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## ORDER M-263 APPEAL M-930086

Institution: The Corporation of the Town of  
Markham  
FEBRUARY 8, 1994  
(INQUIRY OFFICER HALE)

### KEYWORDS

law enforcement • interfere with law  
enforcement

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## ORDER M-264 APPEAL M-9300478

Institution: Metropolitan Toronto Police  
Services Board  
FEBRUARY 8, 1994  
(INQUIRY OFFICER FINEBERG)

### KEYWORDS

personal information • unjustified invasion  
of privacy • compiled as part of an  
investigation

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*\* An application for judicial review has been brought in respect of each of the following Orders: P-590, P-609, P-612, P-616 and M-231. Three applications were abandoned: P-380, P-551 and P-555; and two were heard and dismissed: P-312 and M-77. One of the respondents in the application for judicial review of Order P-352—in which the Court of Appeal quashed the Assistant Commissioner's Order—is seeking leave to appeal the decision to the Supreme Court of Canada.*

## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED		
	1993*	1992*
Provincial	631	639
Municipal	559	451
Total	1190	1090

NUMBER OF ACTIVE APPEAL FILES CLOSED		
	1993*	1992*
Provincial	773	711
Municipal	635	411
Total	1408	1122

METHOD OF CLOSING ACTIVE APPEAL FILES 1993		
	BY ORDER	OTHER THAN BY ORDER
Provincial	249	524
Municipal	177	458
Total	426	982

Numbers are subject to change

\* January 1 - December 31

## COMPLIANCE INVESTIGATIONS

The following highlights are prepared for the purpose of convenience only. For accurate reference, refer to the full-text compliance investigations. Reports released on or after June 1 may be ordered from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8; fax (416)326-5317.

### INVESTIGATION I93-032P

Institution: Ministry of Health (Health Disciplines Board)

DECEMBER 24, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

address • correspond • hospital • medical  
• police

The complainant had requested that the Board review a decision that the College of Physicians and Surgeons of Ontario (the College) had made regarding her complaints about ten doctors. When she requested the review, she stated: "I would like to have full disclosure of all data considered by the College and also information from the Investigator to justify their conclusion".

The Board released a file of about 200 documents to the complainant, but also released the same information to the doctors' agent. The file included copies of correspondence to and from the complainant on the subject of her complaints about the doctors, and portions of her medical records. It also included copies of correspondence that had been forwarded to the College from the Office of the Police Complaints Commissioner. This correspondence included a letter the complainant had written to a Chief of Police, concerning her complaints about the doctors and complaints about police officers.

When the review of her complaints against the doctors was held, the complainant noted that everyone who attended had been given a copy of the above documents. She believed that her privacy had been breached by the disclosure of her information to the doctors and their agent, and possibly others, who had attended the review. She believed that her medical records in the file might have been removed from the review room and subsequently used by the doctors in some way.

#### CONCLUSION

The IPC found that the complainant's personal information had been disclosed in accordance with section 42(c) of the *Act*, for the purpose for which it had been obtained, which was to conduct the review.

The IPC found no evidence to show that individuals who were not parties to the review had attended, and no evidence that copies of the file had been removed from the review room, other than for storage or shredding.

#### SECTIONS CONSIDERED

2(1), 42(c)

#### STATUTES CONSIDERED

*Health Disciplines Act*

### INVESTIGATION I93-037P

Institution: The Workers' Compensation Board

NOVEMBER 26, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • personinfo • medical • WCB

The complainant, a Workers' Compensation Board (WCB) claimant, was concerned that the WCB had collected information about her private life with her spouse, and had disclosed this information to her employer and to her former

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

Boards of Education, I93-043M, I93-053M

Community College, I93-083P

Hydro Commission, I93-074M

Ministries

Attorney General, I93-056P

Community and Social Services, I93-081P

Education and Training, I93-079P,  
I93-089P

Environment and Energy, I93-054P

Finance, I93-067P, I93-075P

Health, I93-032P, I93-043P, I93-046P,  
I93-052P, I93-059P, I93-091P,  
I94-001P

Solicitor General and Correctional  
Services, I93-069P

Municipalities, I93-031M, I93-046M,  
I93-054M

Police Services Board, I93-038M

Workers' Compensation Board, I93-037P

claims representative. The information was contained in a Non Economic Loss Assessment and covering letter, (the NEL), prepared by a physician for the WCB.

#### CONCLUSION

The IPC determined that in order to properly make an NEL assessment, and to fairly determine the amount of compensation due to the complainant, it had been necessary for the WCB to collect information about the complainant's private life. The IPC concluded that the WCB's collection had been necessary to the proper administration of a lawfully authorized activity, and had therefore been in accordance with section 38(2) of the *Act*.

The IPC determined that the WCB had disclosed the complainant's personal information to the employer in compliance with section 42(12) of the *Workers' Compensation Act*, which requires the WCB to send a copy of the NEL to the employer. The IPC concluded that the WCB's disclosure was for the purpose of



complying with an Act of the Legislature and was, thus, in accordance with section 42(e) of the *Act*.

The IPC found that the complainant's personal information had been disclosed to her former claims representative in error because the change in representatives had not been updated in the computer in a timely fashion. The IPC determined that this disclosure was not in accordance with any provisions of section 42 of the *Act*.

The IPC also noted that the WCB did not use confidential envelopes when mailing NELs to employers; thus sensitive personal information might be viewed unnecessarily by other staff – for example, by those responsible for opening mail.

#### RECOMMENDATION

The IPC recommended that: (1) the WCB take steps to ensure that adjudicators update the information in their computers as soon as they are notified of a change of claims representative; and (2) the WCB use confidential envelopes when mailing out medical information to employers. The envelopes should be addressed to a named officer, or a generic title should be used – for example, "WCB Claims Administrator".

#### SECTIONS CONSIDERED

2(1), 38(2), 42

#### STATUTES CONSIDERED

*The Workers' Compensation Act*

### INVESTIGATION I93-043P

Institution: Ministry of Health

NOVEMBER 23, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

employee • hospital • medical

An employee of one of the Ministry's psychiatric hospitals (the Hospital), had requested employment accommodation under the Ministry's employment equity program. During the course of arranging the employee's accommodation needs, the employee's supervisor, the Director of Psychology, disclosed the employee's medical diagnosis to: the Hospital's Director of Materials Management, the Assistant Administrator, the Employment Equity Advisor, and staff of the Personnel department.

The Hospital stated that it had relied on section 42(d) of the *Act* for the disclosures. Each of the employees to whom the complainant's personal information had been disclosed needed the information in the performance of his or her duties, and the disclosures were necessary and proper to the discharge of the Hospital's functions.

#### CONCLUSION

The IPC was of the view that providing for the accommodation needs of an employee under the employment equity program was an administrative function of the Hospital.

The IPC found that the Assistant Administrator needed the complainant's personal information for the purpose of ensuring that her accommodation needs were met. Therefore, the IPC concluded that the disclosure of the complainant's personal information was to an officer who needed the information in the performance of his duties, and the disclosure was necessary and proper in the discharge of one of the Hospital's administrative functions. The disclosure was, thus, in accordance with section 42(d) of the *Act*.

However, the IPC found that the Director of Materials Management did not need to know the complainant's personal information in order to purchase equip-

ment which had already been identified; the staff of the Personnel department did not need this personal information in order to support the complainant's accommodation needs or to maintain their records; the Employment Equity Advisor did not need the personal information since she was not, at that time, advocating for the complainant's accommodation needs. The IPC concluded, therefore, that these disclosures were not to officers who needed the complainant's personal information in the performance of their duties. The disclosures were not, thus, in accordance with section 42(d) of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Ministry take steps to ensure that hospital staff are aware of the limited purposes for which the disclosure of personal information is permitted under the *Act*. The IPC also recommended that the Ministry establish a guideline which sets out the steps to be taken by hospital staff when processing an application for employee accommodation under the employment equity program. This guideline should clearly set out to whom an applicant's personal medical information may be disclosed.

#### SECTIONS CONSIDERED

2(1), 42

### INVESTIGATION I93-046P

Institution: Ministry of Health

DECEMBER 8, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclosure • security • SIN • computer

A hospital employee was concerned that the hospital was storing employee-related injured worker information with regular patient information on a compu-

ter system that was accessible by other employees, who did not require access to this information. He was also concerned that pay stubs were being distributed in an unsecured manner in unsealed envelopes, and that employee time sheet printouts showing employees' Social Insurance Numbers (SINs) were being sent to departments in an unsecured manner. He also stated that time sheets were being left on desks where they could be read by anyone passing by.

#### CONCLUSION

The IPC found that pay cheques/pay stubs were being distributed to employees through their supervisors or delegates, in unsealed envelopes. However, during the course of our investigation, the hospital initiated new procedures which required all staff to pick up their own pay cheques/pay stubs personally from the hospital's business office.

The IPC found that computer printouts of employees' time sheets with the SIN were being sent to head nurses, supervisors, department heads and other managers in order to complete information on time worked. The completed time sheets were then returned to the hospital's payroll department where the payroll staff would key the data into the computer.

The Ministry stated that it had relied on section 42(d) of the *Act* for the disclosure of employees' SIN, since officers or employees of the institution needed this information in the performance of their duties. However, it was the IPC's view that only the staff in the payroll department who required the SIN to key data into the computer for payroll entry needed this information in the performance of their duties. The disclosure of employees' SIN to staff in other departments was found not to be in accordance with section 42(d).

The IPC found that the computer printouts of time sheets were being distributed and returned in sealed envelopes and that the hospital's procedures required the responsible individuals to ensure that time sheets were not left on their desks in a way which allowed others to read them. However, the Ministry acknowledged that some individuals may not have been following these procedures.

The IPC also found that employee-related injured worker information, including Workers' Compensation Board claims, was contained in a stand-alone personal computer that was distinct from the hospital's computer system, which contained regular patient information. Employees who had sought counselling and assistance from doctors at the hospital were treated as regular patients. Their medical files and related documents, however, were kept separately and securely. The hospital had also taken measures to ensure that these employees could not be identified in the hospital's computerized records. Their real names were not used and their addresses, SINs and health card numbers were recorded as "unknown". The key to their real identities was kept securely, with very limited access.

#### RECOMMENDATION

The IPC recommended that the Ministry: (1) seek an alternative method for collecting information on employees' time worked — one that would not involve the disclosure of employees' SIN to staff of departments, other than the Payroll department; and (2) remind staff of their obligation to follow the hospital's procedures at all times with respect to the security of personal information contained in the computer printouts of time sheets.

#### SECTIONS CONSIDERED

42, s.4(1) of Reg. 532/93

## INVESTIGATION I93-052P

Institution: Ministry of Health

DECEMBER 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

medicalcert • employee • hospital

An employee of one of the Ministry's psychiatric hospitals (the Hospital) had been required to provide a medical certificate to the Hospital after being absent from work. The medical certificate, containing the complainant's name, the name and address of her physician, and the date and reason for her absence, i.e. "medical", was then disclosed to the Hospital's Assistant Administrator, Patient Services (the Assistant Administrator), the Regional Human Resources Administrator (the HR Administrator), and one of the Ministry's legal counsel.

The Hospital stated that it had relied on section 42(d) of the *Act* for the disclosures. Each of the employees to whom the complainant's personal information had been disclosed needed the information in the performance of his or her duties, and the disclosures were necessary and proper to the discharge of the Hospital's functions.

#### CONCLUSION

The IPC was of the view that verifying an employee's absence from work by requesting an employee's medical certificate was an administrative function of the Hospital.

The IPC found that of the personal information on the medical certificate, the complainant's name and the date and reason for her absence from work, i.e. "medical", was needed by the Assistant Administrator and the HR Administrator in the performance of their duties of verifying the reason for the complainant's absence. The disclosures of this



personal information were, thus, in accordance with section 42(d) of the *Act*. However, at the time of disclosure, the legal counsel did not need this personal information in the performance of her duties and, therefore, the disclosure to her was not in accordance with section 42(d) of the *Act*.

The IPC also found that the complainant's physician's name and address were not needed by the Assistant Administrator, the HR Administrator, and the legal counsel in the performance of their duties and, therefore, the disclosures of this personal information were not in accordance with section 42(d) of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Ministry take steps to ensure: (1) that all Hospital staff are aware of the limited purposes for which the disclosure of personal information is permitted under the *Act*; and (2) all Hospital staff, including management, are aware of the circumstances under which personal information contained in an employee's medical certificate may be released, further to the Hospital's revised policy on the confidentiality of employee health records.

#### SECTIONS CONSIDERED

2(1), 42

### INVESTIGATION I93-054P

Institution: Ministry of Environment and Energy

JANUARY 26, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

accuracy • available • disclose  
• environment • public record

The Ministry had conducted an investigation under the *Environmental Protection Act* into the activities of some employees of an incorporated company

which had resulted in charges being laid against the complainant. The Ministry had then disclosed — in a Ministry publication — details about the complainant's conviction and the amount he was said to have been fined. The complainant was concerned about the disclosure of his personal information and about the accuracy of the personal information disclosed.

#### CONCLUSION

It was the Ministry's position that the information disclosed was not the complainant's personal information since he had been charged as a result of employment-related rather than private activities. The IPC determined that the complainant had been convicted and ordered by the court to make restitution. It was the IPC's view that since the information disclosed was about an identifiable individual, it was thus, personal information.

The Ministry submitted that the charges against the complainant had been dealt with by the court where information about the complainant's activities had been placed on the record, and had, therefore, become available to the public. The Ministry stated that it had merely reflected information that was already available to the public in order to inform the public of its enforcement activities and to serve as a deterrent to would-be polluters. The IPC examined the application of section 37, which provides that personal information that is "maintained for the purpose of creating a record that is available to the general public" is not subject to Part III of the *Act*. However, it was our view that the Ministry could not have been said to be maintaining the complainant's personal information specifically for the purpose of creating a record available to the general public. Therefore, section 37 of the *Act* did not apply.

The IPC determined that the complainant's personal information had originated from proceedings conducted in court which are, except in the most exceptional circumstances, open to the public. This serves the dual purpose of informing the public of judicial proceedings, as well as acting as a deterrent to potential offenders. It was the IPC's view that the Ministry had disclosed the complainant's information for substantially similar purposes: namely, to inform the public of its enforcement activities and to deter would-be polluters. It was our view that the Ministry's disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had originally been compiled by the court. The disclosure was thus for a consistent purpose, in accordance with section 42(c) of the *Act*.

The Ministry acknowledged that the information disclosed had not been entirely accurate and had responded to the complainant's request for correction under section 47(2) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 37, 42, 43, 47(2)

#### OTHER STATUTES

*Environmental Protection Act*

### INVESTIGATION I93-056P

Institution: Ministry of the Attorney General

DECEMBER 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

accuracy • available • consistent  
• correction • FSP/SCOE

The complainant had been ordered by the Court to make support payments to his ex-wife through the Family Support Plan (the FSP). He believed that the FSP had provided his ex-wife with a copy of the general ledger record of his FSP account, and that its staff had provided



her with details of his payments. He believed that, although his ex-wife had the right to know the status of the account, she had no right to know the specifics of his payments, and that disclosure of this information to her was not in compliance with the *Act*. The complainant was also concerned that the information itself had not been accurate.

#### CONCLUSION

The FSP raised the issue of whether section 37 applied in the circumstances of this case. The IPC found that the complainant's personal information in the general ledger record would not have been maintained by the FSP for the purpose of making that information available to the general public. Therefore, the FSP could not rely on section 37 to exempt the general ledger record from the privacy provisions of the *Act*.

The IPC concluded that the complainant's personal information had been disclosed in accordance with section 42(c) of the *Act*, for a consistent purpose. The FSP's purpose for disclosing the information to the ex-wife (i.e., to provide her with an explanation of how the payments had been made) was reasonably compatible with the purpose for which the FSP had obtained the information — to enforce the court order on behalf of the ex-wife.

With respect to the accuracy of the personal information, the complainant was advised of his right under section 47(2) of the *Act* to request correction of his personal information.

#### SECTIONS CONSIDERED

2(1), 37, 42(c), 43, 47(2)

## INVESTIGATIONS I93-059P, I93-091P, I94-001P

Institution: Ministry of Health

JANUARY 13, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • medical

Three individuals complained separately about the disclosure of their personal information by the Ministry to the Ontario Breast Screening Program (OBSP).

Each woman had received a letter from the OBSP suggesting that, since she was "of a certain age", she should be aware of certain facts about health risks. In addition, each woman was advised: "Your name was selected in a confidential manner using your Health Number and your age".

#### CONCLUSION

The OBSP had asked the Ministry to conduct a mailing to women between the ages of 50 and 69, to make them aware of and invite them to participate in local breast screening clinics. The Ministry had set up a "confidentiality agreement" with Canada Post to conduct the mailing from a listing provided by the Ministry. The listing given to Canada Post consisted of the names and addresses of women who were between the ages of 50 and 69.

The OBSP had also provided a form letter to Canada Post which did not contain any personal information. Canada Post then conducted a "mail merge" — the names and addresses from the listing were inserted onto the form letters provided by the OBSP. Canada Post then sent one of these letters to each of the targeted individuals.

The IPC determined that no personal information had been disclosed directly

to the OBSP. Unless the targeted individual contacted the clinic, the OBSP would not be aware that she had received the letter. The health number was not disclosed to either the OBSP or to Canada Post.

The Ministry stated that it had relied on section 42(c) for the disclosure of personal information to Canada Post, i.e., the disclosure was for a consistent purpose. The Ministry had collected the personal information in question on the Registered Persons Database for the purposes of "health planning and co-ordination". It was the our view that "health promotion" was compatible with health planning and co-ordination. In "promoting health", the Ministry disclosed the personal information to Canada Post so that the OBSP letter could be sent to the targeted individuals (including the complainants). It was our view that these individuals could have reasonably expected such a disclosure of their personal information. Thus, the disclosure was for a consistent purpose, in accordance with section 42(c) of the *Act*.

The IPC, however, found that while the Ministry had set up the confidentiality agreement with Canada Post to conduct the mailing, and had sent a letter to Canada Post stating that the agreement was acceptable, it had not yet signed the agreement — only Canada Post and OBSP had signed.

#### RECOMMENDATION

The IPC recommended that the Ministry sign the confidentiality agreement, since it had custody and control of the personal information.

#### SECTIONS CONSIDERED

2(1), 42(c)

#### STATUTES CONSIDERED

*Ministry of Health Act*

## INVESTIGATION I93-067P

Institution: Ministry of Finance

DECEMBER 3, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

express

An individual complained about the Ministry's collection of income/expense statements for the purpose of preparing a market value reassessment on a building for which the complainant was the owner.

### CONCLUSION

The IPC advised the complainant that the *Assessment Act* expressly authorized the Ministry to collect the information in question for the purpose of making a proper assessment, in accordance with section 38(2) of the *Act*.

### SECTIONS CONSIDERED

38(2)

### STATUTES CONSIDERED

*Assessment Act*

No report issued

## INVESTIGATION I93-069P

Institution: Ministry of the Solicitor General and Correctional Services

DECEMBER 2, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

inadvertent • disclosure

The complainant had made an access request for his personal information held in a number of Ontario Provincial Police offices. In the documents he received were two records that pertained to another individual whose name was the same as his. The complainant was of the view that this individual's personal information had been wrongfully disclosed by the Ministry.

### CONCLUSION

The Ministry stated that generally, before personal information is released to a requester, records that may respond to an access request are reviewed at a number of different levels. Unfortunately, in this instance the wrong information had been inadvertently disclosed by the Ministry. The Ministry stated that when it became aware of this disclosure, all staff involved in processing access requests were instructed about the importance of verifying information before it is released to a requester.

The complainant was satisfied with the Ministry's corrective actions.

### SECTIONS CONSIDERED

2(1), 32

No report issued

## INVESTIGATION I93-075P

Institution: Ministry of Finance

JANUARY 12, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collect • SIN • tax

Effective January 1, 1993, self-employed individuals in the province of Ontario who earned a net income of more than \$40,000 were required to pay the Employer Health Tax (EHT). Prior to 1993, self-employed individuals were only required to pay this tax on behalf of their employees.

In order to register for the EHT, self-employed individuals were required to complete a registration form. The complainant, a self-employed individual, objected to the collection of his Social Insurance Number (SIN) on the registration form.

### CONCLUSION

The IPC determined that the Ministry collected the SIN for the administration and enforcement of the EHT. EHT staff required the SIN in order to verify a client's identity when they responded to account related inquiries or to questions regarding interpretation. EHT staff also required the SIN for auditing and other verification functions. In addition to verifying information received from self-employed individuals, the SIN was necessary to facilitate the exchange of tax information with Revenue Canada, under existing exchange of information agreements.

It was the IPC's view that the Ministry's administration and enforcement of the EHT was a "lawfully authorized activity" and that the collection of the SIN was necessary to the proper administration of this activity. The Ministry's collection of the SIN was, therefore, in accordance with section 38(2) of the *Act*.

### SECTIONS CONSIDERED

38(2), 39(2)

### STATUTES CONSIDERED

*Employer Health Tax*

## INVESTIGATION I93-079P

Institution: Ministry of Education and Training

DECEMBER 16, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

mediation

The complainant was an employee at an employment planning and youth career centre which was a "local broker" for the jobsOntario Training Program (the Program). The complainant had been assisting in negotiations between a company that had agreed to hire new employees under the Program, and a branch of jobsOntario Training.



Former employees of this company then raised certain issues concerning their participation in the Program and the manner in which their complaints had been handled at the local broker level. The Ministry conducted an investigation of these issues during which an employee of the Ministry collected and disclosed the complainant's personal information to other Ministry employees.

The Ministry employees involved in both the collection and disclosure of the complainant's personal information apologized to the complainant, however, she was still concerned about the matter.

#### CONCLUSION

After discussions with the IPC, the Ministry agreed to send a letter to Ministry employees involved, reminding them of their obligations under the *Act* and the limited purposes for which personal information may be collected and disclosed pursuant to the *Act*. The IPC and the complainant were provided with copies of the letters sent. The complainant was then satisfied with the Ministry's actions.

#### SECTIONS CONSIDERED

2(1), 38(2), 42

No report issued

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### INVESTIGATION I93-081P

Institution: Ministry of Community and Social Services

JANUARY 5, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • socialben

The Ministry had identified the complainant as a recipient of Family Benefits Allowance (FBA) who might also be eligible for Canada Pension Plan (CPP) disability benefits. The Ministry provided the complainant with a CPP "kit"

and two forms; both the kit and forms were to be completed and returned to the Ministry where staff would review and forward them to Health and Welfare Canada (HWC). However, in this case, the kit and forms were lost. The complainant obtained a replacement kit from HWC, but without the forms. The Ministry provided the complainant with two blank forms to be signed and returned to the Ministry.

The complainant contended that she should not have been required to sign blank forms. She also complained about having to return the forms to the Ministry and not directly to HWC. She questioned who had access to the forms at the Ministry.

#### CONCLUSION

The IPC found that the forms provided to the complainant should have been filled in first by Ministry staff with information found in her Family Benefits file. It was not the normal practice of the Ministry to ask clients to sign blank forms.

The Ministry advised that verbal and written directions would be issued to all staff in the relevant areas, stating that under no circumstances were clients to be requested to sign blank or incomplete forms.

The IPC found that the Ministry required completed forms to be returned to its offices so that its staff could review them for completeness and accuracy before they were forwarded to HWC, and to ensure that applications were processed without delay. However, had the complainant asked to send her information directly to HWC, her request would have been considered by the Ministry.

The IPC found that the Ministry did not keep copies of the kits or forms, but forwarded them directly to HWC. A notation was made on the client's Family Benefits file that an application had been made for CPP.

#### SECTIONS CONSIDERED

2(1), 38(2)

No report issued

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### INVESTIGATION I93-083P

Institution: A College of Applied Arts and Technology

JANUARY 6, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

control • evaluate • retention • security

The practice of professors in the College's nursing division was to prepare anecdotal notes for each student, for evaluation purposes. The complainant, a former student of the nursing division, had requested copies of certain anecdotal notes containing her personal information, from the College. The complainant had been advised by the College that the notes in question had been destroyed. The complainant contended that the College had prematurely destroyed the notes. She was also concerned about their security.

#### CONCLUSION

Although the complainant had been advised that the anecdotal notes were the professors' personal notes, prepared by them for their own use, the IPC found that the College had custody and control of the notes. The IPC also found that the College's retention of the notes was not for the prescribed minimum period of one year after use and was not, therefore, in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93.



The College advised the IPC that the professors themselves were responsible for maintaining the anecdotal notes for each of their students. The College stated that while it did not have a policy on how professors should be maintaining these notes, faculty members at regional meetings had been told that they were expected to take appropriate precautions. It was the IPC's view, however, that reasonable measures to prevent unauthorized access to the personal information contained in the anecdotal notes were not "defined, documented and put in place" as required by section 4(1) of Regulation 460, as amended by Regulation 532/93.

#### RECOMMENDATION

The IPC recommended that the College ensure that the anecdotal notes be retained, in accordance with section 5(1) of Regulation 460, as amended by Regulation 532/93; that measures be defined, documented and put in place to prevent unauthorized access to the notes, as required in section 4(1) of the Regulation; and that all professors be made aware of these measures when they are implemented.

#### SECTIONS CONSIDERED

2(1), 4(1) and 5(1) of Regulation 460, as amended by Regulation 532/93

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### INVESTIGATION I93-089P

Institution: Ministry of Education and Training

OCTOBER 18, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

employee

A former employee of the Ministry complained that her privacy had been breached when her separation slip had been mailed to the office where she had previously worked, in an envelope marked "(Named) Office" only. The envelope had been

opened by an employee in the office, and had later been mailed to the complainant's home in an envelope marked "Confidential".

#### CONCLUSION

Following the IPC contact with the Ministry, the Freedom of Information and Privacy Co-ordinator sent a memo to all Ministry staff clarifying the Ministry's position that personal records should be sent in a confidential envelope to one's home address, if an individual has ceased employment with the Ministry. On this basis, the complaint was settled.

#### SECTIONS CONSIDERED

2(1), 32(d)

No report issued

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### INVESTIGATION I93-031M

Institution: A Township

DECEMBER 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • *Municipal Act*

The complainant had filed a complaint with the Ontario Provincial Police (the Police) concerning certain members of the Township's Council. The Police had conducted an investigation but no charges had been laid. The Township had then requested a copy of the General Occurrence Report (the report) from the Police. According to the complainant, the Township was selling the report to the public at 25 cents a copy.

The complainant contended that the Township's disclosure of his personal information in this way was contrary to the *Act*.

#### CONCLUSION

The Township stated that it had relied on section 32(e) of the *Act* for the disclosure

of the report. Once the report was received as correspondence, it became a Township record and therefore could be disclosed under section 74 of the *Municipal Act*. The disclosure was for the purpose of complying with an Act of the Legislature and was thus, in accordance with section 32(e) of the *Act*.

The IPC determined that section 74(1) of the *Municipal Act* had been amended in 1992 to read that the section was subject to the *Act*. It was our view that the Township had thus been required to determine if any provisions of section 32 applied before disclosing records containing personal information under section 74(1) of the *Municipal Act*. Since the Township had not done so in this case, its disclosure of the report was not in accordance with section 74(1) of the *Municipal Act* and was not thus, in accordance with section 32(e) of the *Act*.

The Township also stated that its disclosure was in accordance with section 32(c). The Township had obtained the report in order to determine the status of the police investigation and to complete its records. It was the IPC's view that the Township's disclosure of the complainant's personal information was neither for the purpose for which it had been obtained nor for a consistent purpose. Therefore the Township's disclosure was not in accordance with section 32.

#### RECOMMENDATION

The IPC recommended that the Township establish written procedures to ensure that records which contained personal information are disclosed only in accordance with the *Act*.

#### SECTIONS CONSIDERED

2(1), 27, 32(c), 32(e)

#### STATUTES CONSIDERED

*Municipal Act*

## INVESTIGATION I93-038M

Institution: A Board of Commissioners of Police

NOVEMBER 5, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

accessreq • fees • lawactivity • lawenforce  
• lawuse • name • necessary • police

The complainant had made two freedom of information (FOI) requests to the Board of Commissioners of Police (the Board). One was a request for access to his own personal information. The other was an extensive request for access to general records. When he received the records containing his own personal information, the complainant found that another police force, to whom he had made a similar extensive general records request, had faxed the Board a copy of correspondence related to his fee estimate for the request. The complainant believed that the collection of this information by the Board had breached the *Act*.

### CONCLUSION

The IPC determined that the complainant's personal information had been collected by the Board for two purposes: to administer the FOI request for general records, and to pursue an investigation into whether a charge of mischief might be laid against the complainant, in conjunction with his general FOI request.

The IPC concluded that, in the circumstances of this case, the Board's collection of the complainant's personal information for the purpose of administering the FOI request had been in accordance with section 28(2) of the *Act*, since the collection had been necessary to the proper administration of the lawfully authorized activity of processing the complainant's FOI request.

The IPC concluded that the Board's collection of the complainant's personal information for the purpose of investigating whether a charge of mischief had been warranted, had been in accordance with section 28(2) of the *Act*, for the purpose of law enforcement.

The IPC also concluded that the Board's collection had been in accordance with sections 29(1)(b) and (g). These sections respectively provide that personal information may be collected indirectly if an institution may disclose it under section 32, and that personal information may be collected indirectly for the purpose of law enforcement.

### SECTIONS CONSIDERED

2(1), 28(2), 29(1)(b), 29(1)(g), 32(f)(ii)

No report issued

## INVESTIGATION I93-043M

Institution: A Board of Education

DECEMBER 14, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

collect • disclose • access request

The complainant stated that the Board, on receipt of her access requests, had "investigated" her and found out her first name and gender. The complainant stated that the Board had then wrongly disclosed her first name and gender to the law firm retained by the Board. The complainant discovered this disclosure when a lawyer from the firm wrote her two letters, using her first name and the term "Ms".

### CONCLUSION

The IPC found no evidence that the Board had "investigated" the complainant when it collected her personal information. The complainant had provided her two access requests in two envelopes.

Inside one envelope was a letter to the Director of Education referring to her access requests. This letter had been signed by the complainant and had contained her first name in full. The lawyer who was the Board's Acting Information and Privacy Co-ordinator at the time, had concluded from this letter, that the complainant's name was that of a woman and had, accordingly, addressed her as "Ms" in his reply.

The IPC found that the Board's disclosure of the complainant's personal information to the law firm was in accordance with section 32(c) of the *Act*. The Board had collected the complainant's personal information in order to process her access requests. The Board had then disclosed this information for the very same purpose to the lawyer at the law firm, who was the Board's Acting Co-ordinator.

### SECTIONS CONSIDERED

2(1), 32(c)

## INVESTIGATION I93-046M

Institution: A Municipality

DECEMBER 31, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

disclose • WCB

An employee of the Municipality had been receiving Workers' Compensation Board (WCB) benefits. While he was off work recuperating from his injury, he was in a car accident. This accident coincidentally involved one of the Municipality's vehicles. The complainant subsequently filed a civil suit against his employer for damages in respect of this incident.

The Municipality's insurance company was concerned that the complainant's claim for injuries might involve prior and similar WCB claims and requested



documentation from the Municipality relevant to the complainant's WCB claim. In reply, the Municipality sent them copies of the complainant's WCB records. The complainant contended that the Municipality's disclosure of his WCB records to its insurance company was contrary to the *Act*.

#### CONCLUSION

The Municipality stated that it had relied on section 32 of the *Act* for the disclosure of the complainant's personal information. The IPC determined that one of the purposes for which the Municipality obtained the complainant's WCB claim was for WCB claims management. However, the Municipality's disclosure of the complainant's WCB information was not for this purpose but to assist the insurance company with its investigation in respect of the complainant's suit for damages. The disclosure was not, therefore, for the purpose for which the personal information had been obtained. The IPC also determined that the disclosure was not for a purpose that was consistent with the purpose for which the personal information had been obtained. Thus, the Municipality's disclosure of the complainant's personal information to its insurance company was not in accordance with section 32(c) of the *Act*.

The IPC also noted that if the Municipality had not coincidentally been the complainant's employer, it would not have been in custody and control of the complainant's WCB records.

#### RECOMMENDATION

The IPC recommended that the Municipality take steps to ensure that all disclosures of personal information are made in accordance with the *Act*, for example, by clarifying any existing guidelines or procedures regarding the disclosure of personal information.

#### SECTIONS CONSIDERED 2(1), 32

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### INVESTIGATION I93-053M

Institution: A Board of Education

JANUARY 24, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • name • employment • school board • public meeting

The complainant, a board trustee, had informed a newspaper reporter of certain budgetary measures the Board had been considering which had been discussed in an in-camera meeting. The Board subsequently reprimanded the complainant during one of its regular open meetings, for providing this information to the reporter.

#### CONCLUSION

It was the Board's view that section 27 of the *Act* applied: the complainant had gone to the newspaper and had made this issue public; therefore any subsequent disclosure by the Board of the complainant's reprimand would not have contravened the *Act*. However, the IPC concluded that the Board had not maintained the information concerning the complainant's reprimand for the purpose of making that information available to the public. It was thus, our view that the Board could not rely on section 27 of the *Act* to exempt this personal information from the privacy provisions of the *Act*.

The Board also stated that it had reprimanded the complainant in a public meeting in accordance with its policy entitled "Confidentiality of Information". The Board submitted that it had to follow the policies already in place before the *Act* came into effect. The IPC advised the Board that once the *Act* was implemented, institutions under the *Act*

were required to comply with its provisions. Thus, any disclosure by the Board of personal information in its custody or under its control was required to be in compliance with the disclosure provisions of section 32 of the *Act*. The IPC concluded that in the circumstances of this case, the Board's disclosure of the complainant's personal information was not in accordance with section 32 of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Board take steps to ensure that disclosures of personal information are made in accordance with the *Act*, for example, by amending or clarifying its policies accordingly.

#### SECTIONS CONSIDERED 2(1), 27, 32

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### INVESTIGATION I93-054M

Institution: A Municipality

OCTOBER 28, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • healthno • socialasst

An individual questioned the authority of a Municipality to collect his health card number when he had applied for general welfare assistance.

#### CONCLUSION

Every person who receives general welfare assistance is entitled to benefits under the Ontario Drug Benefits Program, and therefore, the Municipality requires his/her health card number. It is our view that the Municipality's processing and approval of applications for general welfare assistance, which includes drug benefits, is a lawfully authorized activity and that the collection of the health card number is necessary to this activity. Therefore, the



Municipality's collection of the health card number is in accordance with section 28(2) of the *Act*.

**RECOMMENDATION**

N/A

**SECTIONS CONSIDERED**

2(1), 28(2)

**STATUTES CONSIDERED**

*Health Cards and Numbers Control Act*

No report issued

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**INVESTIGATION I93-074M**

Institution: A Hydro Electric Commission

DECEMBER 10, 1993

(ASSISTANT COMMISSIONER CAVOUKIAN)

**KEYWORDS**

disclose • employee

An individual complained that his employer, a hydro electric commission, was disclosing its employees' personal information on an attendance board located in a particular department. When an employee was not in the office, it was indicated on the board that he or she was off sick, on Workers' Compensation Benefits, etc. The complainant believed that the Commission's disclosure of such personal information was contrary to the *Act*.

**CONCLUSION**

The Commission acknowledged that this attendance board existed. It agreed to take corrective action with respect to the personal information disclosed, such that when employees were not in the department, the attendance board would only note that they were "not available".

**SECTIONS CONSIDERED**

32

No report issued

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED		
	1993*	1992*
Provincial	119	73
Municipal	81	94
Non-Jur	10	0
Total	210	167

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED		
	1993*	1992*
Provincial	107	104
Municipal	100	98
Non-Jur	10	0
Total	217	202

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1993		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	16	37
Retention	0	2
Use	1	3
Disclosure	80	51
Access	2	2
Correction	2	0
Notice	3	0
P.I. Bank	0	2
Security	1	1
Personinfo	1	2

Numbers are subject to change

\* January 1 – December 31

<sup>†</sup>Excludes cancelled investigations

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SUMMER  
1994



# IPC PRÉCIS

HIGHLIGHTS OF ORDERS AND COMPLIANCE INVESTIGATIONS FROM THE OFFICE OF  
THE INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

TOM WRIGHT, COMMISSIONER

## ORDERS

All IPC orders are highlighted briefly below. Selected orders include textual summaries. This information is provided for convenience only. For accurate reference, refer to the full-text orders available from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario, M7A 1N8; fax (416)326-5317.

### ORDER P-625 APPEAL P-9200822

Institution: Ministry of the Attorney General

FEBRUARY 9, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

wiretap records • federal legislative  
paramountcy • *Courts of Justice Act*

### ORDER P-626\* APPEAL P-9200802

Institution: Ministry of the Solicitor General  
and Correctional Services

FEBRUARY 10, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • unjustified  
invasion of • presumption of • compiled  
as part of investigation • *Police Services Act*

### ORDER P-627 APPEAL P-9200547

Institution: Ontario Northland  
Transportation Commission

FEBRUARY 10, 1994

(INQUIRY OFFICER BIG CANOE)

## AT A GLANCE

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#### KEYWORDS

minutes • economic or other interests  
• competitive position • monetary value  
• advice to government • cabinet records

• relations with other governments  
• information received in confidence  
• third party information • labour  
relations

---

**ORDER P-628**  
**APPEAL P-9300304**

Institution: Office of the Public Trustee  
FEBRUARY 10, 1994  
(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

minutes • advice to government • *Public Trustees Act*

---

**ORDER P-629**  
**APPEAL P-9300197**

Institution: Ministry of Consumer and Commercial Relations  
FEBRUARY 11, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

examinations, test questions and scores  
• custody or control • *Real Estate and Business Brokers Act*

---

**ORDER P-630**  
**APPEAL P-9300178**

Institution: Ontario Native Affairs Secretariat  
FEBRUARY 11, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

aboriginal land claims records • relations with other governments  
• intergovernmental relations

---

**ORDER P-631**  
**APPEAL P-9300142**

Institution: Ministry of Municipal Affairs  
FEBRUARY 15, 1994  
(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

petition • personal information  
• professional capacity

---

**ORDER P-632**  
**APPEALS P-9300201,  
P- 9300202**

Institution: Stadium Corporation of Ontario Ltd.  
FEBRUARY 22, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

advice to government • third party information • financial information  
• economic or other interests • monetary value • competitive position • financial interests • reasonable steps to locate record  
• content of affidavit

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**ORDER P-633**  
**APPEAL P-9300615**

Institution: Ministry of Education and Training  
FEBRUARY 24, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

time extension • time limit for responding to request for access

---

**ORDER P-634**  
**APPEAL P-9300263**

Institution: Ministry of the Solicitor General and Correctional Services  
FEBRUARY 25, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • business/personal  
• unjustified invasion of • public scrutiny  
• relevant to a fair determination of rights  
• highly sensitive • supplied in confidence  
• pecuniary or other harm • individual's reputation

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all documents relating to an investigation of a senior

Ministry employee. The basis for the investigation was an allegation that the senior Ministry employee had misused public funds.

**ORDER**

The Ministry was ordered to disclose the records, except for any identifying information, such as the names and positions of the affected persons.

In issuing this decision, the Assistant Commissioner was called upon to decide: (1) whether the disclosure of the records would be desirable for the purpose of subjecting the activities of the Ministry to public scrutiny [section 21(2)(a)]; and (2) whether the senior Ministry employee would be exposed unfairly to pecuniary or other harm should personal information found in the record be ordered disclosed [section 21(2)(i)].

The Assistant Commissioner indicated previous orders have held that, to establish the relevance of this provision, evidence must be provided to demonstrate that the activities of the institution have been publicly called into question, necessitating disclosure of the personal information of the affected persons in order to subject the activities of the institution to public scrutiny.

The Assistant Commissioner pointed out, however, that the records at issue in this appeal were created during a recessionary environment which has placed an unparalleled obligation on government agencies to ensure that tax dollars are spent wisely. He further explained that it is reasonable to expect that investigation reports which are designed to respond to allegations of financial improprieties will inherently be subject to a high degree of public scrutiny.

According to the Assistant Commissioner, in these situations, the evidentiary



threshold to establish that "the activities of a Ministry have been publicly called into question" should be modest in nature. That threshold, in turn, will be satisfied, where there is some evidence that a public interest has been expressed about the circumstances which led to the creation of the record.

Based on the evidence before him and the approach outlined above, he found that the activities of the Ministry and of the senior Ministry employee had been publicly called into question and therefore, section 21(2)(a) was a relevant consideration which weighed in favour of releasing the records at issue.

With respect to the application of section 21(2)(i), the Assistant Commissioner accepted that in determining whether an employee's reputation might be unfairly damaged by the release of such information, it is relevant to consider the outcome of an investigation which judges the conduct of that individual. The Assistant Commissioner pointed out, however, that in interpreting this provision, it is also necessary to reflect on the nature of the allegations raised, the type of records at issue and the position occupied by the government employee whose conduct is being questioned.

In arriving at his decision, the Assistant Commissioner took into account the position of the primary affected person and the expectation that such an individual would have, that expense claims would be carefully scrutinized. He then concluded that the release of an investigation report which probes the appropriateness of these expenditures cannot be said to unfairly damage that individual's reputation. As a result, section 21(2)(i) was not held to be a relevant consideration in determining whether the disclosure of the information would constitute an unjustified invasion of personal privacy.

The Assistant Commissioner found that the release of the personal information contained in the records would not constitute an unjustified invasion of the personal privacy of the affected persons. Because the Assistant Commissioner found that an adequate level of public scrutiny respecting the results of the investigation could be achieved without disclosing the names or other identifying information of the affected persons, he ordered the Ministry to disclose the records to the appellant, subject to the severance of any identifying information, such as the names or positions of the affected persons.

#### SECTIONS CONSIDERED

2(1), 21(2)(a),(d),(e),(f),(h),(i), 49(b)

#### PREVIOUS ORDERS CONSIDERED

P-256, P-273, P-312, P-434, M-84, M-173

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### ORDER P-635 APPEAL P-9300287

Institution: Ministry of Consumer and Commercial Relations

FEBRUARY 25, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

personal information • professional capacity • solicitor client privilege • advice to government

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### ORDER P-636 APPEAL P-9300143

Institution: Ontario Lottery Corporation

FEBRUARY 25, 1994

(INQUIRY OFFICER BIG CANOE)

#### KEYWORDS

mailing list • address • economic or other interests • commercial information • monetary value

---

### ORDER P-637 APPEAL P-9300643

Institution: Ministry of the Attorney General

FEBRUARY 25, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

personal information file • right of correction • personal information

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### ORDER P-638 APPEAL P-9300513

Institution: Ontario Native Affairs Secretariat

FEBRUARY 28, 1994

(INQUIRY OFFICER HIGGINS)

#### KEYWORDS

reasonable steps to locate record

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### ORDER P-639 APPEAL P-9300389

Institution: Sheridan College of Applied Arts and Technology

FEBRUARY 28, 1994

(INQUIRY OFFICER CROPLEY)

#### KEYWORDS

reasonable steps to locate records

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### ORDER P-640 APPEAL P-9300577

Institution: Ministry of Consumer and Commercial Relations

MARCH 1, 1994

(INQUIRY OFFICER CROPLEY)

#### KEYWORDS

personal information • unjustified invasion of • presumption of • compiled as part of investigation • *Day Nurseries Act*



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**ORDER P-641**  
**APPEAL P-9200839**

Institution: Ministry of Transportation  
MARCH 3, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

access procedure • request for continuing access • solicitor client privilege • personal information • name • unjustified invasion of • cabinet records • advice to government • third party information • economic or other interests

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**ORDER P-642**  
**APPEALS P-9300154, P-9300176**

Institution: Ministry of Community and Social Services  
MARCH 3, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

application of the *Act* • personal information • unjustified invasion of • highly sensitive • relevant to a fair determination of rights • another individual's personal privacy

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**ORDER P-643**  
**APPEAL P-9300248**

Institution: Ministry of Community and Social Services  
MARCH 3, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • professional capacity • advice to government • another individual's personal privacy • relevant to a fair determination of rights • pecuniary or other harm • supplied in confidence

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**ORDER P-644**  
**APPEAL P-9300524**

Institution: Ministry of Health  
MARCH 14, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • identifiable individual • unjustified invasion of

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**ORDER P-645**  
**APPEAL P-9300400**

Institution: Ministry of the Attorney General  
MARCH 18, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

reasonable steps to locate record

---

**ORDER P-646**  
**APPEAL P-9300501**

Institution: Ministry of the Attorney General  
MARCH 18, 1994  
(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

reasonable steps to locate record • access procedure • transfer of request

---

**ORDER P-647**  
**APPEAL P-9300559**

Institution: Interim Waste Authority Limited  
MARCH 18, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

confidentiality provision in other Act • *Railway Act* • third party information • financial • commercial • competitive position • reasonable expectation of • similar information no longer supplied

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**ORDER P-648**  
**APPEAL P-9300117**

Institution: Social Assistance Review Board  
MARCH 21, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

notes • personal information • unjustified invasion of • presumption of • social service or welfare benefits • *Ministry of Community and Social Services Act* • status of requester • disclosure under the *Act* • public interest override

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**ORDER P-649**  
**APPEAL P-9300378**

Institution: Ministry of Natural Resources  
MARCH 22, 1994  
(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

law enforcement • security concerns

---

**ORDER P-650**  
**APPEAL P-9300478**

Institution: Ministry of the Solicitor General and Correctional Services  
MARCH 28, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • law enforcement • intelligence information

---

**ORDER P-651**  
**APPEAL P-9300295**

Institution: Ministry of the Solicitor General and Correctional Services  
APRIL 6, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

harassment complaint records • personal information • unjustified invasion of • pecuniary or other harm • highly sensitive • supplied in confidence • relevant to a fair determination of rights

## ORDER P-652 APPEAL P-9300502

Institution: Ministry of the Attorney General

APRIL 6, 1994

(INQUIRY OFFICER HALE)

### KEYWORDS

record • creation not required • reasonable steps to locate record

The Ministry of the Attorney General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for answers to certain questions relating to the requester's arrest and to four subsequent attendances he made in court.

### ORDER

The Ministry's decision was upheld.

The issue that had to be addressed was the appropriateness of requests being made to an institution in the form of questions and the extent of the institution's obligation in responding to such requests. Inquiry Officer Hale pointed out that Order 17 had previously canvassed this issue.

In Order 17, former Commissioner Linden quoted the Williams Report, "Public Government for Private People" (1980):

*On page 241 (Volume 2) of the report, the author addresses the question of to which kinds of information or documents access should be given:*

*"A common feature of the freedom of information schemes in place in other jurisdictions is that the type of "information" to which access is given is material which is already recorded in the custody or control of the government institution. Thus, a right to "information" does not embrace the right to require the government institution to provide an answer to a specific*

*question; rather, it is generally interpreted as requiring that access be given to an existing document on which information has been recorded. This is not to say, of course, that the government should feel no obligation to answer questions from the public. Indeed, as we have indicated in an earlier chapter [13], the government of Ontario has committed substantial resources to establishing citizen's inquiry services with this specific objective in view. It would be quite unworkable, however, to grant a legally binding right of access to anything other than information contained in existing documents or records. [emphasis added]*

*For obvious reasons, most freedom of information schemes broadly construe the concept of "document" or "record" to include the various physical forms in which information may be recorded and stored. Thus, the right of access normally extends to all printed materials, maps, photographs and information recorded on film or in computerized information systems".*

*Based on this report, Commissioner Linden's conclusion was that an individual's right of access to information under the Act relates to information already recorded, whatever its physical form. In the absence of existing recorded information, the Act does not require the creation of a new record.*

Inquiry Officer Hale adopted the view of Commissioner Linden, that an institution is not required to create records in response to a request which is posed in the form of a question. He noted, however, that when a request for personal information is received by an institution under the *Act* in the form of a series of questions, it is incumbent upon the institution to seek clarification of the request under sections 24(2) and 48(2) of the *Act*. Inquiry Officer Hale was satisfied that, in the circumstances of this appeal, the Ministry has met this obligation fully. He found that the Ministry has taken all reasonable steps to clarify the nature of

the appellant's request and to provide him with access to all records which are responsive to the request as originally and subsequently framed.

### SECTIONS CONSIDERED

24(2), 48(2)

### PREVIOUS ORDERS CONSIDERED

17, 54

## ORDER P-653 APPEAL P-9300090

Institution: Pay Equity Commission

APRIL 8, 1994

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

confidentiality provision in other Act • *Pay Equity Act* • third party information • labour relations • supplied • in confidence • law enforcement • report • law enforcement • interfere with law enforcement • confidential source

The Pay Equity Commission (the Commission) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information regarding the pay equity plans either completed or being formulated for the Ottawa Civic Hospital.

### ORDER

The decision of the head was partially upheld.

In issuing this decision, Inquiry Officer Big Canoe was called upon: (a) to decide whether the identity of the applicants, which appeared in the records entitled "Application for Review Services", should be disclosed; and (b) whether the records at issue in the appeal came within section 17(1)(d) of the *Act*.

In deciding whether the identity of the applicants should be disclosed, Inquiry Officer Big Canoe considered section 32(4) of the *Pay Equity Act*, which she

then held to be a confidentiality provision which prevailed over this *Act*. She then concluded that, where applicants have indicated on an "Application for Review Services" document that they wish to remain anonymous, section 67(2) of the *Act* applies, and the identity of the applicant is not accessible under the *Act*.

In interpreting the section 17(1)(d) exemption, Inquiry Officer Big Canoe had to interpret the scope of the term "labour relations information", which is found in this provision. She concluded that the words refer to information concerning the collective relationship between an employer and its employees. She then examined the information contained in the records and found them to be compiled in the course of the negotiation of pay equity plans which, when implemented, would affect the collective relationship between the employer and its employees. For this reason, she concluded that, with some exceptions, this information may properly be characterized as "labour relations information".

The Inquiry Officer then turned to the second part of the section 17(1)(d) test. She pointed out, that in a labour relations context such as this, it is normally the practice that, where an impartial third party is performing services analogous to those of a mediator or conciliation officer, any information supplied by a party is not disclosed without the consent of the party supplying the information. She found that the circumstances surrounding the submission of most of the information contained in the records to be similar in nature to those relating to mediation or conciliation and, therefore, that an expectation of confidentiality existed concerning the information supplied by the parties.

The final part of the test involved the Inquiry Officer deciding whether the

information was supplied to "another person appointed to resolve a labour relations dispute". She found that a Review Officer appointed under section 34(1) of the *Pay Equity Act* may be considered "another person appointed to resolve a labour relations dispute" within the meaning of section 17(1)(d) of the *Act*.

Accordingly, she found that all three parts of the section 17(1)(d) test had been met, for the majority of records at issue.

#### SECTIONS CONSIDERED

14(1)(a) and (b), 14(1)(d), 14(2)(a), 17(1)(a),(b),(c) and (d)

#### OTHER LEGISLATION CONSIDERED

*Pay Equity Act*, section 32(4)

#### PREVIOUS ORDER CONSIDERED

200

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### ORDER P-654 APPEAL P-9300086

Institution: Ministry of Housing

APRIL 14, 1994

(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

cabinet records • personal information  
• professional capacity • unjustified  
invasion of • relevant to a fair  
determination of rights

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### ORDER P-655\* APPEAL P-9300610

Institution: Ministry of Health

APRIL 15, 1994

(INQUIRY OFFICER CROPLEY)

#### KEYWORDS

third party information • commercial  
information • supplied • in confidence  
• *Laboratory and Specimen Collection  
Centre Licensing Act* • competitive position  
• personal information • unjustified  
invasion of • presumption of • education  
or employment history • resume

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### ORDER P-656 APPEAL P-9300527

Institution: Ministry of Housing

APRIL 15, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

harassment complaint records • personal  
information • another individual's  
personal privacy • highly sensitive  
• supplied in confidence • pecuniary or  
other harm • inaccurate information

---

### ORDER P-657 APPEAL P-9300078

Institution: Ministry of the Solicitor General  
and Correctional Services

APRIL 15, 1994

(INQUIRY OFFICER HALE)

#### KEYWORDS

personal information • another  
individual's personal privacy  
• presumption of • compiled as part of  
investigation • pecuniary or other harms  
• highly sensitive • inaccurate information  
• relevant to a fair determination of rights  
• law enforcement • danger to life or safety  
• security concerns



## ORDER P-658\* APPEAL P-9300324

Institution: Ministry of the Attorney General

APRIL 19, 1994

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

commissioner/delegate • power to control own process • raise or consider further exemption • advice to government • performance or efficiency report • economic or other interests • proposed plans or policies • personal information • identifiable individual • another individual's personal privacy • consent to access to personal information • unjustified invasion of • relevant to a fair determination of rights • presumption of • education or employment history • recommendations or evaluations • highly sensitive • public interest override

The Ministry of the Attorney General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the complete investigation report into the activities of the Legal Services Branch of the Pension Commission of Ontario (the PCO).

The Ministry disclosed portions of the record to the requester, but denied access to the balance of the document pursuant to the exemptions contained in sections 13(1), 18(1)(f), 21(1) and 49(b) of the *Act*. The requester appealed the decision of the Ministry.

### ORDER

The Ministry's decision was partially upheld.

Two pivotal issues were addressed in this appeal. First, whether the Office of the Commissioner had the authority to set a limit on the time during which it will allow an institution to rely upon new discretionary exemptions not originally

raised in its decision letter. Second, whether the section 13(1) exemption applied to the record at issue.

On July 15, 1993, the Office of the Commissioner provided the Ministry with a Notice of Inquiry which indicated, among other things, that, based on a policy adopted by the Office of the Commissioner, the Ministry would have 35 days from the date of this correspondence to raise any new discretionary exemptions not originally claimed in the decision letter. No additional exemptions were raised by the Ministry during this period. It was not until December 1993, that the Ministry raised, for the first time, the application of the discretionary exemptions provided by sections 18(1)(g) and 19 of the *Act* in its representations.

In dealing with the issue of whether the Office of the Commissioner had the authority to set a limit on the time during which it will allow an institution to rely upon new discretionary exemptions not originally raised in its decision letter, Inquiry Officer Fineberg noted that there have been a number of previous orders issued by the Office of the Commissioner which have determined that the Commissioner has the power to control the process by which the inquiry process is undertaken; for example, Order P-373, the facts of which she found to be analogous to those in this appeal. In that case, some of the parties which had been notified as "affected persons" claimed that the time period allowed for submitting written representations was unreasonable. Inquiry Officer Fineberg pointed out, that in addressing the concerns which had been raised in that appeal, former Assistant Commissioner Mitchinson made the following general statement:

*In my view, the authority to set time limits for the receipt of representations and to implement procedures for identifying and*

*notifying affected persons is included in the implied power to develop rules and procedures for the parties to an appeal. In my view, the procedures followed for setting time limits for the receipt of their representation and the identification of parties was appropriate, in the circumstances of these appeals.*

Adopting this analysis, as well as the findings in other previous orders and the general scheme of the *Act*, Inquiry Officer Fineberg found that the implied power to develop rules and procedures gives the Office of the Commissioner the authority to set a limit on the time during which it will allow an institution to rely upon new discretionary exemptions not originally raised in its decision letter. She then noted that during the inquiry process, the Ministry was unable to provide any explanation as to why these new exemptions had been raised four months after the original decision letter had been issued, nor did it advance any extenuating circumstances to take this case outside the parameters of the policy.

Since the Ministry failed to advance any arguments to indicate why the policy of the Office of the Commissioner should not apply in this appeal, Inquiry Officer Fineberg refused to consider the application of sections 18(1)(g) and 19 in the present appeal.

Concerning the issue of whether the section 13(1) exemption applied to the record at issue, Inquiry Officer Fineberg noted that for section 13(1) to apply, the record must reveal advice or recommendations. She found that there was only a small portion of the information in the pages for which the Ministry claimed the section 13(1) exemption that met the requirements of this section. She then pointed out that section 13(2) of the *Act* lists certain exceptions to the 13(1) exemption. Specifically, section 13(2)(f) states:

*Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,*

*a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;*

In its submissions, the Ministry stated that this section only applies to reports on the performance or efficiency of an institution as a whole, but is not applicable to a report concerning part of a Ministry, as is the case in the present appeal.

Inquiry Officer Fineberg rejected this submission. She pointed out, that in Orders P-348 and P-603, Inquiry Officer Big Canoe adopted a broader interpretation of this section in order to not restrict access to those reports and studies which focus on one or more discrete program areas within an institution, rather than the institution as a whole. Inquiry Officer Fineberg also pointed out that this interpretation is consistent with the general principle of providing requesters with a general right of access to government information and is in accordance with the plain meaning of this exception.

Inquiry Officer Fineberg found, that even though a small portion of the information in the pages for which the Ministry claimed the section 13(1) exemption met the requirements of this section, these portions of the record fit squarely within the section 13(2)(f) mandatory exemption. This was the case because the corrective recommendations were designed to assist the institution to deal efficiently with existing and future problems and to improve the performance and operations of the PCO.

#### SECTIONS CONSIDERED

2(1), 13(1), 18(1)(f), 21(1), 49(b)

#### PREVIOUS ORDERS CONSIDERED

16, 118, 164, 207, P-229, P-256, P-257, P-304, P-312, P-326, P-345, P-348, P-356, P-369, P-373, P-434, P-529, P-537, P-541, P-597, P-603

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#### ORDER P-659 APPEAL P-9300601

Institution: Ministry of the Attorney General  
APRIL 20, 1994  
(INQUIRY OFFICER HALE)

#### KEYWORDS

personal information • report • law enforcement

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#### ORDER P-660 APPEAL P-9400005

Institution: Workers' Compensation Board  
APRIL 21, 1994  
(INQUIRY OFFICER JIWAN)

#### KEYWORDS

*Workers' Compensation Act* • personal information • professional capacity  
• solicitor client privilege • crown counsel  
• in litigation

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#### ORDER P-661 APPEAL P-9300593

Institution: Ministry of Finance  
APRIL 22, 1994  
(INQUIRY OFFICER HALE)

#### KEYWORDS

*Loan and Trust Corporations Act* • third party information • financial • commercial  
• supplied • in confidence • undue loss or gain

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#### ORDER P-662 APPEALS P-9300362, P-9300363

Institution: Ministry of the Solicitor General and Correctional Services  
APRIL 22, 1994  
(INQUIRY OFFICER HIGGINS)

#### KEYWORDS

employment • job applications or competitions • economic and other interests • commercial information  
• technical information

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#### ORDER P-663 APPEALS P-9300180, P-9300254

Institution: Ministry of the Solicitor General and Correctional Services  
APRIL 25, 1994  
(INQUIRY OFFICER FINEBERG)

#### KEYWORDS

personal information • another individual's personal privacy • highly sensitive • supplied in confidence  
• individual's reputation • public scrutiny  
• relevant to a fair determination of rights  
• inaccurate information

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#### ORDER P-664 APPEAL P-9300141

Institution: Ministry of Health  
APRIL 27, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

delegation of power or duty • advice to government • cabinet records • public information • reasonable steps to locate record

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#### ORDER P-665 APPEALS P-9300024, P-9300171

Institution: Ministry of the Solicitor General and Correctional Services  
APRIL 27, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

#### KEYWORDS

report • occurrence • personal information • another individual's personal privacy • pecuniary or other harm  
• relevant to a fair determination of rights





## ORDER P-666 APPEAL P-9300069

Institution: Ministry of Health

APRIL 27, 1994

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

reasonable steps to locate records • access procedure • transfer of request • personal information • advice to government • solicitor client privilege • another individual's personal privacy • research purposes • presumption of • compiled as part of investigation • compiled • public interest override • record • appeal generated records • representations re FOI appeal

The Ministry of Health (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all information pertaining to the requesters in their personal capacities and to a named physiotherapy centre.

### ORDER

The Ministry's decision was partially upheld.

In its submissions, the Ministry stated that the presumption against disclosure found in section 21(3)(b) of the *Act* applied to the personal information contained in the records and that the release of this information would constitute an unjustified invasion of the personal privacy of other named individuals under section 49(b) of the *Act*. In order to determine whether section 21(3)(b) applied, the Assistant Commissioner first explored the context in which the information was originally created and then assembled together.

The Assistant Commissioner pointed out that the personal information found in the records was initially collected by the Ministry during its own internal

investigation into the billing practices of the appellants. According to the Ministry's representations, all of this information was then turned over to the Ontario Provincial Police detachment in Guelph, which subsequently initiated its own investigation. As a result of the OPP's inquiry, charges were subsequently laid against one of the appellants under the *Criminal Code*.

Based on the fact that the personal information was originally obtained for an internal Ministry investigation which did not have a law enforcement dimension, the Assistant Commissioner had to consider whether the information was compiled as part of an investigation into a possible violation of the law for the purposes of section 21(3)(b) of the *Act*. The key issue, therefore, was whether the term compiled means originally created or simply gathered or collected.

The Assistant Commissioner referred to established caselaw which stated that the primary rule for interpreting legislation is that "the words of the statute must be first construed literally in their ordinary grammatical sense". The Assistant Commissioner then canvassed the dictionary meaning for the term "compile", which is to gather or collect, rather than to create at first instance.

In arriving at his conclusion, the Assistant Commissioner also took into account the decision of the United States Supreme Court in *John Doe Agency v. John Doe Corporation* 110 S. Ct. 471 (1989), which came to a similar conclusion about the meaning of the term compiled.

Assistant Commissioner Glasberg concluded that the ordinary meaning of compile for the purposes of section 21(3)(b) of the *Act* is to collect, gather or assemble together and, therefore, to

compile does not mean to create at first instance.

The result of this interpretation is that, for personal information to be compiled and identifiable as part of an investigation into a possible violation of law under section 21(3)(b), it is not necessary for this information to have been originally created or prepared for that specific investigation. Rather, the section 21(3)(b) presumption will apply as long as the personal information was, at some point in time, assembled or gathered together as part of this investigation.

The Assistant Commissioner was satisfied that the personal information contained in the records at issue was compiled by the OPP as part of an investigation into the billing practices of the appellants and that the investigation was, in turn, directed towards determining whether there had been a violation of the *Criminal Code* for which charges could be laid. On this basis, he concluded that the release of this personal information would constitute a presumed unjustified invasion of the personal privacy of other individuals under section 21(3)(b) and must not be released to the appellants.

### SECTIONS CONSIDERED

2(1), 13(1), 19, 21(3)(b), 23, 25(1), 47(1), 49(a), 49(b), 52(9), 52(13)

### OTHER LEGISLATION CONSIDERED

*U.S. Freedom of Information Act*, Exemption 7

### PREVIOUS ORDERS CONSIDERED

P-211, P-537, P-592, P-612



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## ORDER M-265 APPEAL M-9300111

Institution: Kingston Police Services Board

FEBRUARY 9, 1994

(INQUIRY OFFICER HALE)

### KEYWORDS

advice to government

The Kingston Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to records relating to submissions made by police officers and civilian employees to the Chief of Police or his delegate, about "difficulties of their jobs within the Kingston Police Force".

### ORDER

The decision of the Police was partially upheld.

Inquiry Officer Hale had to decide whether the record entitled: "Section II - Patrol Audit Report" fell within the ambit of the section 7(2)(i) exception to the section 7(1) exemption. A pivotal issue that had to be addressed was whether the record came within the third part of the test set out below.

Inquiry Officer Hale stated that, for the exception provided by section 7(2)(i) of the *Act* to apply, it was necessary to establish that:

1. The document must be a "report" within the meaning of the *Act*.
2. The report must have been prepared by a committee or similar body within an institution.
3. The committee or similar body must have been established for the purpose of preparing a report on a particular topic.

In its submissions, the Police had stated that, although the report at issue in this

appeal was produced by its Strategic Working Committee, the lists of recommendations produced were not the report which the committee was given the task of completing.

Inquiry Officer Hale rejected the submission of the police that a report prepared by a committee must relate solely to the topic for which the committee was established – in this case, the creation of a long-range plan. He noted that the mandate of the Working Committee was to prepare a long-range strategic plan and that within this mandate, the committee was charged with a number of objectives and duties. Further, it was held that the content of the record entitled "Section II – Patrol Audit Report" fell within at least one of the enumerated duties.

Inquiry Officer Hale found that it would place too restrictive a reading on section 7(2)(i) of the *Act* to hold that the exception applies only to those reports which a committee is specifically directed to prepare. He felt that such an interpretation of the section is not borne out by its wording. Further, he found that the report prepared by the working committee fell within the ambit of its mandate, regardless of the fact that it could not be characterized as a report "recommending broad goals and objectives". Inquiry Officer Hale found, that if a committee decides to prepare a report – the subject matter of which is within its mandate – then, despite the fact that it is neither the committee's final or ultimate report, nor the report the committee was originally requested to prepare, the exception in section 7(2)(i) still applies. He found that the third part of the test described above had been met.

### SECTIONS CONSIDERED

7, 16

### PREVIOUS ORDERS CONSIDERED

24, 118, 168, P-348

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## ORDER M-266 APPEAL M-9300244

Institution: Metropolitan Separate School Board [Toronto]

FEBRUARY 9, 1994

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

economic or other interests • examination questions

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## ORDER M-267 APPEAL M-9300370

Institution: Metropolitan Toronto Police Services Board

FEBRUARY 14, 1994

(INQUIRY OFFICER HALE)

### KEYWORDS

law enforcement • interfere with law enforcement • control of crime • refusal to confirm or deny existence of record

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## ORDER M-268 APPEAL M-9300204

Institution: Simcoe County District Health Unit

FEBRUARY 14, 1994

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

law enforcement • interfere with law enforcement • personal information • unjustified invasion of

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## ORDER M-269 APPEAL M-9300395

Institution: Metropolitan Toronto Police Services Board

FEBRUARY 14, 1994

(INQUIRY OFFICER HIGGINS)

### KEYWORDS

reasonable steps to locate record

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## ORDER M-270 APPEAL M-9300136

Institution: Corporation of the Improvement  
District of Gauthier

FEBRUARY 17, 1994

(INQUIRY OFFICER HIGGINS)

### KEYWORDS

reasonable steps to identify record

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## ORDER M-271 APPEAL M-9300007

Institution: Simcoe County District Health  
Unit

FEBRUARY 21, 1994

(ASSISTANT COMMISSIONER GLASBERG)

### KEYWORDS

previous disclosure of similar or same  
record • custody and control • *Health  
Protection and Promotion Act*

The Simcoe County District Health Unit (the Health Unit) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records in the custody of the institution relating to the requester's complaint to the College of Physicians and Surgeons of Ontario (the College), regarding the testing of drinking water at a particular location.

The appellant subsequently narrowed his request to two letters which were authored by the Health Unit's Medical Officer of Health (the MOH) and which were directed to the College.

### ORDER

The Health Unit was ordered to obtain copies of the two letters from the MOH. The Health Unit was also ordered to issue a decision letter to indicate whether it was prepared to release the letters.

The sole issue to be determined in this appeal was whether the two letters writ-

ten by the MOH were in the custody and/or control of the Health Unit.

In its representations, the Health Unit submitted that, although the records were created by a senior person employed by the agency, they were not in the custody of the Health Unit. It submitted that this was the case because the letters represented "private correspondence" authored in response to a complaint filed with the College.

In his representations, the MOH endorsed the position of the Health Unit and claimed that the records involved a private and confidential matter involving him as a physician licensed by the College, and not as Medical Officer of Health. He stated that the Health Unit does not interfere with or monitor the personal or professional lives of Health Unit employees "unless it relates to that person's employment at the Health Unit".

Assistant Commissioner Glasberg indicated that, in the present appeal, the two letters at issue were provided by the MOH of the Health Unit to the College. He further pointed out that these pieces of correspondence did not make reference to the nature of the complaint filed, nor did they appear to respond to any of the allegations raised. Rather, they contained only background information on the subject of water quality testing in the province.

On this basis, the Assistant Commissioner found these records did not constitute a personal assertion by the MOH that the complaint raised against him was ill-founded. Instead, the Assistant Commissioner concluded that the MOH responded to the College in his role as a senior official of the Health Unit, rather than in his personal capacity.

The Assistant Commissioner then ordered the Health Unit to obtain copies of

the two letters from the MOH so that it could re-establish formal custody over these documents. Once this step had been taken, the Health Unit was ordered to issue a decision letter to indicate whether it was prepared to release the letters and the enclosures.

### SECTIONS CONSIDERED

4, 36(2)(a)

### OTHER LEGISLATION CONSIDERED

*Health Protection and Promotion Act*,  
section 11

### PREVIOUS ORDERS CONSIDERED

120, P-239, P-271, P-326, P-396,  
P-505, M-59, M-152, M-165

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## ORDER M-272 APPEAL M-9300403

Institution: City of Scarborough

FEBRUARY 22, 1994

(INQUIRY OFFICER HALE)

### KEYWORDS

fees • personal information • search  
charges • waiver

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## ORDER M-273 APPEAL M-9300210

Institution: York Region Board of Education

FEBRUARY 23, 1994

(INQUIRY OFFICER BIG CANOE)

### KEYWORDS

third party information • supplied  
• economic or other interests • financial  
interests • personal information  
• unjustified invasion of • deemed not to  
be a presumption against disclosure  
• classification • salary range • benefits or  
employment responsibilities • contract for  
personal services • public interest override  
• meetings • in camera • substance of  
deliberations • discretion

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**ORDER M-274**  
**APPEAL M-9300126**

Institution: Town of Oakville  
FEBRUARY 23, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

solicitor client privilege • accounts

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**ORDER M-275**  
**APPEALS M-9300197,**  
**M-9300198, M-9300199**

Institution: City of Peterborough  
FEBRUARY 24, 1994  
(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

reasonable steps to locate records

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**ORDER M-276**  
**APPEAL M-9300459**

Institution: Hamilton-Wentworth Regional  
Police Services Board  
FEBRUARY 24, 1994  
(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

personal information • access procedure  
• method of access • reasonable steps to  
locate record

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**ORDER M-277**  
**APPEAL M-9300248**

Institution: East Parry Sound Board of  
Education  
MARCH 2, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • identifiable  
individual • unjustified invasion of  
• deemed not to be a presumption against  
disclosure • contract for personal services  
• third party information • supplied

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**ORDER M-278**  
**APPEAL M-9300272**

Institution: City of Ottawa  
MARCH 2, 1994  
(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

personal information • unjustified invasion  
of • presumption of • employment history  
• deemed not to be a presumption against  
disclosure • classification • salary range  
• benefits or employment responsibilities  
• contract for personal services • public  
scrutiny • supplied in confidence • other  
considerations • public interest override

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**ORDER M-279**  
**APPEAL M-9300524**

Institution: The Corporation of the City of  
Barrie  
MARCH 3, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

personal information • confidential  
correspondence • name • unjustified  
invasion of • presumption of • compiled as  
part of investigation • *Planning Act*

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**ORDER M-280**  
**APPEAL M-9300064**

Institution: Toronto Board of Education  
MARCH 3, 1994  
(COMMISSIONER WRIGHT)

**KEYWORDS**

employment • job competition • personal  
information • advice to government  
• solicitor client privilege • litigation  
privilege • another individual's personal  
privacy • presumption of  
• recommendations or evaluations

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**ORDER M-281**  
**APPEAL M-9300173**

Institution: Simcoe Board of Education  
MARCH 8, 1994  
(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • solicitor client  
privilege • litigation privilege • lawyer's  
brief • reasonable steps to locate record

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**ORDER M-282**  
**APPEAL M-9300228**

Institution: Corporation of the City of  
London  
MARCH 9, 1994  
(INQUIRY OFFICER HIGGINS)

**KEYWORDS**

personal information • advice to  
government • reasonable steps to locate  
record

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**ORDER M-283**  
**APPEAL M-9300417**

Institution: Peel Regional Police Services  
Board  
MARCH 11, 1994  
(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

police records • personal information  
• unjustified invasion of • presumption of  
• compiled as part of investigation  
• reasonable steps to locate records

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**ORDER M-284**  
**APPEAL M-9300021**

Institution: Regional Municipality of Ottawa-  
Carleton  
MARCH 11, 1994  
(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

third party information • financial  
information • contractual negotiations  
• competitive position • personal  
information



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**ORDER M-285**  
**APPEAL M-9300186**

Institution: City of Kitchener

MARCH 11, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

solicitor client privilege • litigation  
privilege • discretion

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**ORDER M-286**  
**APPEAL M-9300139**

Institution: City of Kitchener

MARCH 11, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

third party information • pricing  
information • reasonable expectation of  
• solicitor client privilege • waiver  
• discretion • reasonable steps to locate  
record

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**ORDER M-287**  
**APPEAL M-9300366**

Institution: City of Scarborough

MARCH 11, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

harassment complaint records • personal  
information • identifiable individual  
• unjustified invasion of • supplied in  
confidence • advice to government

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**ORDER M-288**  
**APPEAL M-9300122**

Institution: Township of Kitley

MARCH 14, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

tender • letter of credit • pricing  
information • third party information  
• financial information • commercial  
information • competitive position  
• public interest override

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**ORDER M-289**  
**APPEAL M-9300076**

Institution: Guelph Police Services Board

MARCH 16, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

witness statements • report • occurrence  
• personal information • unjustified  
invasion of • presumption of • compiled as  
part of investigation • relevant to a fair  
determination of rights

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**ORDER M-290**  
**APPEAL M-9300412**

Institution: County of Hastings

MARCH 17, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

personal information • professional  
capacity • employment • references  
• unjustified invasion of  
• recommendations or evaluations • public  
scrutiny

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**ORDER M-291**  
**APPEAL M-9300391**

Institution: Town of Gravenhurst

MARCH 25, 1994

(ASSISTANT COMMISSIONER GLASBERG)

**KEYWORDS**

solicitor client privilege • lawyer's brief  
• waiver

The Town of Gravenhurst (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for, among other things, a 12-page summary of the evidence tendered at an OMB hearing. This summary was transcribed by a solicitor retained by the Town. The solicitor provided a copy of this document to legal counsel for a developer who was also a party to the proceeding.

**ORDER**

The Town was ordered to disclose the record except for some personal information in the document which the requester did not want.

The first issue to be determined in this appeal was whether section 12 of the *Act* (solicitor-client privilege) applied to the record at issue. The Assistant Commissioner found that it did. The second issue for consideration was whether the Town had waived its reliance on the solicitor-client privilege.

In his representations, the appellant submitted that the Town had waived solicitor-client privilege when its solicitor disclosed a copy of the summary to the solicitor for the developer of the project. In its representations, the Town stated that at no time did it waive its confidentiality rights in the record. The Town further asserted that it was not until the appeal was launched that it learned that its solicitor had released the record at issue. In this respect, the Town relied on the general principle that only the client can waive solicitor-client privilege.

Assistant Commissioner Glasberg concluded that, since the Town's solicitor was acting within his ostensible realm of authority and given the Town's subsequent endorsement of his actions involving the OMB proceeding, the release of the record by the solicitor effectively bound the Town. He also found that, when the solicitor disclosed the record in this fashion, this constituted a general waiver of the solicitor-client privilege. The result was that the Town could not rely on section 12 of the *Act* to protect this documentation from disclosure.

**SECTION CONSIDERED**

12

**PREVIOUS ORDERS CONSIDERED**

M-2, M-19, M-83, M-162

## ORDER M-292 APPEAL M-9300190

Institution: Nipissing District Roman  
Catholic Separate School Board

MARCH 28, 1994

(INQUIRY OFFICER FINEBERG)

### KEYWORDS

personal information • name • another  
individual's personal privacy • authorized  
by statute • *Labour Relations Act*  
• unjustified invasion of • presumption of  
• employment history

The Nipissing District Roman Catholic  
Separate School Board (the Board) re-  
ceived a request under the *Municipal  
Freedom of Information and Protection of  
Privacy Act* (the *Act*) for access to:

*the work assignments for each person as-  
signed as an occasional teacher in the Eng-  
lish Language Section of the Board for the  
school years 1991-1992 and 1992-1993.  
This should include the names, schools and  
dates of assignments.*

The Board responded by denying access  
to the requested information on the basis  
that it constituted the personal infor-  
mation of identifiable individuals and  
that disclosure, without the express con-  
sent of the individuals, would violate  
their personal privacy rights, thereby  
implicitly claiming the application of  
section 14 of the *Act*. The requester  
appealed the decision of the Board.

### ORDER

The decision of the Board was upheld.

The Board explained that the records  
containing the requested information  
consisted of forms entitled "Monthly  
Report of Absences and Supply Teach-  
ing" (the forms) and that the forms are  
submitted to the Board by each school  
for each month of the school year.

The Board further explained that, as a  
result of previous requests for similar  
information, it routinely provides the  
appellant with the dates and number of  
days worked by supply teachers in a  
particular school, but does not disclose  
the name of the absent teacher, the rea-  
son for the absence, the number of days  
of the absence or the name of the supply  
teacher. The name of the supply teacher  
was the only information at issue in this  
appeal.

Inquiry Officer Fineberg found that dis-  
closure of the names of the teachers  
would reveal other personal information  
about these individuals, namely the  
number of days and dates on which these  
individuals worked at a specific school  
during the 1991-92 and 1992-93 school  
years. Therefore, she found that the names  
themselves constituted "personal infor-  
mation" as defined in section 2(1) of the  
*Act*.

Section 14 of the *Act* prohibits the dis-  
closure of personal information to any  
person other than the individual to  
whom the information relates, except in  
certain circumstances listed under sec-  
tion 14(1). One of the issues that Inquiry  
Officer Fineberg addressed in deciding  
whether the personal information at issue  
should be disclosed or not, was whether  
an Act of Ontario or Canada expressly  
authorized the disclosure of the personal  
information at issue [section 14(1)(d)].

In its submissions, the appellant did not  
make specific reference to any "Act of  
Ontario or Canada" which expressly au-  
thorizes the disclosure of the names of the  
supply teachers. However, the appellant  
referred to sections 45 and 65 (formerly  
section 64) of the *Labour Relations Act*.  
Section 45 refers to the arbitration  
process. Section 65 requires that "no  
employer shall participate in or interfere  
with the formulation, selection or ad-

ministration of a trade union or the  
representation of employees by a trade  
union".

Based on these sections of the *Labour  
Relations Act*, the appellant submitted  
that:

*The school board's denial of the infor-  
mation to the Local unjustly inhibits the  
preparation of the arbitration case, in that  
the Local does not have all the factual data  
necessary to prepare its case to present to the  
arbitration board in order for the arbitra-  
tion board to make a complete and timely  
decision.*

Inquiry Officer Fineberg pointed out  
that the appellant's position appeared to  
be that disclosure is necessary in order for  
the appellant, a union, to adequately  
discharge its representational duties.

Inquiry Officer Fineberg noted that there  
are no orders of the Office of the Com-  
missioner in which section 14(1)(d) has  
been interpreted. However, there are  
Compliance Investigation Reports which  
have considered the interpretation of the  
phrase "expressly authorized by statute",  
as it is found in section 38(2) of the  
provincial *Freedom of Information and  
Protection of Privacy Act*.

This section states:

*No person shall collect personal information  
on behalf of an institution unless the collec-  
tion is expressly authorized by statute,  
used for the purposes of law enforcement or  
necessary to the proper administration of a  
lawfully authorized activity. [emphasis  
added]*

In Compliance Investigation Report I90-  
29P, the following comments were made  
about this section:

*The phrase "expressly authorized by statute" in subsection 38(2) of the Act requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute, i.e., in a form or in the text of the regulation. [emphasis added]*

In Inquiry Officer Fineberg's view, the same interpretation should apply to the phrase "expressly authorizes" as it is found in section 14(1)(d) of the *Act*. Accordingly, she found that the exception in section 14(1)(d) of the *Act* had no application in the circumstances of this appeal.

**SECTIONS CONSIDERED**

2(1), 14(1)(d), 14(1)(e), 14(1)(f)

**OTHER LEGISLATION CONSIDERED**

*Labour Relations Act*, sections 45, 65 (formerly section 64)

**PREVIOUS ORDERS CONSIDERED**

None

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**ORDER M-293**  
**APPEAL M-9300099**

Institution: York Regional Police Services Board

MARCH 29, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • unjustified invasion of • presumption of • compiled as part of investigation • reasonable steps to locate records

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**ORDER M-294**  
**APPEAL M-9300554**

Institution: Hamilton-Wentworth Regional Police Services Board

MARCH 30, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-295**  
**APPEAL M-9300449**

Institution: Metropolitan Licensing

Commission

MARCH 30, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • unjustified invasion of • presumption of • employment history • highly sensitive • advice to government • solicitor client privilege • public information

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**ORDER M-296**  
**APPEAL M-9300011**

Institution: Metropolitan Licensing

Commission

MARCH 30, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

personal information • unjustified invasion of • presumption of • employment history • highly sensitive • advice to government • solicitor client privilege

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**ORDER M-297**  
**APPEAL M-9300210**

Institution: York Region Board of Education

MARCH 31, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORD**  
discretion

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**ORDER M-298**  
**APPEAL M-9300186**

Institution: City of Kitchener

APRIL 6, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORD**  
discretion

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**ORDER M-299**  
**APPEAL M-9300139**

Institution: City of Kitchener

APRIL 6, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORD**  
discretion

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**ORDER M-300**  
**APPEAL M-9200471**

Institution: Port Hope Police Services Board

APRIL 8, 1994

(INQUIRY OFFICER BIG CANOE)

**KEYWORDS**

police records • personal information • unjustified invasion of • presumption of • compiled as part of investigation • law enforcement • intelligence information • solicitor client privilege • access procedure • transfer of request

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**ORDER M-301**  
**APPEAL M-9300497**

Institution: The Corporation of the County of Northumberland

APRIL 14, 1994

(INQUIRY OFFICER JIWAN)

**KEYWORDS**

fees • fee estimate • preparing record

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**ORDER M-302**  
**APPEAL M-9300501**

Institution: Metropolitan Toronto Police Services Board

APRIL 14, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

police records • personal information • law enforcement (definition) • law enforcement • interfere with law enforcement • unjustified invasion of • presumption of • compiled as part of investigation



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**ORDER M-303**  
**APPEAL M-9300578**

Institution: City of Toronto

APRIL 15, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

report • engineer's • third party  
information • technical • supplied • in  
confidence • similar information no longer  
supplied

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**ORDER M-304**  
**APPEAL M-9300566**

Institution: Metropolitan Toronto Police  
Services Board

APRIL 15, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

police records • personal information  
• unjustified invasion of • presumption of  
• compiled as part of investigation  
• another individual's personal privacy

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**ORDER M-305**  
**APPEAL M-9300490**

Institution: City of Toronto

APRIL 19, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

personal information • severing personal  
identifiers

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**ORDER M-306**  
**APPEAL M-9300108**

Institution: London Police Services Board

APRIL 19, 1994

(INQUIRY OFFICER JIWAN)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-307**  
**APPEAL M-9400201**

Institution: The Corporation of the Town of  
Cobourg

APRIL 19, 1994

(INQUIRY OFFICER JIWAN)

**KEYWORDS**

time extension • time limit for responding  
to request for access

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**ORDER M-308**  
**APPEAL M-9300345**

Institution: York Regional Police Services  
Board

APRIL 19, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

police records • personal information  
• unjustified invasion of • presumption of  
• compiled as part of investigation

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**ORDER M-309**  
**APPEAL M-9400001**

Institution: York Regional Police Services  
Board

APRIL 19, 1994

(INQUIRY OFFICER JIWAN)

**KEYWORDS**

reasonable steps to locate record

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**ORDER M-310**  
**APPEAL M-9300181**

Institution: Belleville Police Services Board

APRIL 20, 1994

(INQUIRY OFFICER HALE)

**KEYWORDS**

minutes • personal information • meetings  
• in camera • economic or other interests  
• plans or positions • solicitor client  
privilege • unjustified invasion of

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**ORDER M-311**  
**APPEAL M-9400023**

Institution: Metropolitan Toronto Police  
Services Board

APRIL 20, 1994

(INQUIRY OFFICER JIWAN)

**KEYWORDS**

reasonable steps to locate records

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**ORDER M-312**  
**APPEAL M-9300562**

Institution: Metropolitan Toronto Police  
Services Board

APRIL 22, 1994

(INQUIRY OFFICER CROPLEY)

**KEYWORDS**

police records • personal information  
• another individual's personal privacy  
• presumption of • compiled as part of  
investigation • medical information

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**ORDER M-313**  
**APPEAL M-9300400**

Institution: Township of Essa

APRIL 26, 1994

(INQUIRY OFFICER FINEBERG)

**KEYWORDS**

notes • personal information • unjustified  
invasion of • presumption of • compiled as  
part of investigation • recommendations  
or evaluations • public scrutiny • relevant  
to a fair determination of rights

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*\* An application for judicial review has been brought in respect of each of the following Orders: P-623 (listed in the spring edition of IPC Précis), P-626, P-655, and P-658. One application was abandoned: M-150; and two were heard and dismissed: P-341 and P-363.*

## Summary of Appeal-related Statistics

NUMBER OF ACTIVE APPEAL FILES OPENED			
	1994 TO DATE *	1993 TO DATE *	1993 TOTAL
Provincial	201	141	631
Municipal	212	114	559
Total	413	255	1190

NUMBER OF ACTIVE APPEAL FILES CLOSED			
	1994 TO DATE *	1993 TO DATE *	1993 TOTAL
Provincial	201	209	773
Municipal	186	157	635
Total	387	366	1408

METHOD OF CLOSING ACTIVE APPEAL FILES 1993 TO DATE		
	BY ORDER	OTHER THAN BY ORDER
Provincial	48	153
Municipal	63	123
Total	111	276

Numbers are subject to change

\* January 1 - June 30

## COMPLIANCE INVESTIGATIONS

The following highlights are prepared for the purpose of convenience only. For accurate reference, refer to the full-text compliance investigations. Reports released on or after June 1 may be ordered from Publications Ontario, Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8; fax (416)326-5317.

### INVESTIGATION I93-036P

Institution: Ministry of Consumer and Commercial Relations

MARCH 4, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

accuracy • address • authorize • carbon copy • disclose • employee • harass

The Ministry investigated a harassment complaint, finding that the complainant had harassed another employee (the aggrieved employee). Sometime later, the aggrieved employee complained that the harassing behaviour was continuing, and a second investigation was conducted by an investigator from another ministry, through the Workplace Discrimination and Harassment Prevention branch (WDHP) of Management Board Secretariat.

The complainant believed that during the investigations, the Ministry had breached the *Act* by disclosing his/her personal information to various individuals who should not have had access; and by failing to take reasonable steps to ensure that the personal information was accurate and up to date before using it to write the harassment investigation report.

#### CONCLUSIONS

The IPC concluded that the complainant's personal information in the harassment complaint had been disclosed to the Deputy Minister, Investigator and

aggrieved employee's Supervisor, in accordance with section 42(d) of the *Act*, since these individuals needed the record in the performance of their duties. Disclosure of the complaint to the Acting Director of the complainant's Branch and to the Human Resources Director, for the purpose of resolving the complaint informally, had not been in accordance with section 42 of the *Act*, since informal resolution was not an option available to the Ministry, according to the sexual harassment directive under which the first complaint had been investigated.

The IPC found that the complainant's personal information in the covering letter had been disclosed to the aggrieved employee in accordance with section 42(c), for the purpose for which it had been compiled by the Ministry to conduct the investigation. However, the complainant's address had not been disclosed to the aggrieved employee in accordance with the *Act*.

The complainant's personal information in a letter from the second investigator had not been disclosed by the Ministry, since the letter was not in the Ministry's possession at the time of the disclosure.

The IPC also found that the Ministry had taken reasonable steps, (e.g., collecting information directly, verifying information and writing the report within 30 days) in accordance with section 40(2), to ensure that the complainant's personal information was accurate and up to date.

#### RECOMMENDATION

The directive under which the first investigation had been conducted had been replaced. Therefore, the IPC's view was that no useful purpose could be served by making recommendations with respect to this directive. However, the IPC recommended that all individuals involved

## AT A GLANCE

### COMPLIANCE INVESTIGATIONS

Cities, I93-029M, I93-034M

Ministries

Consumer and Commercial Relations,  
I93-036P, I93-076P

Natural Resources, I94-006P

Municipalities, I93-037M

Ontario Human Rights Commission, I93-084P

Police Services Boards, I94-003M

Separate School Board, I93-028M

Workers' Compensation Board, I93-106P

in collecting personal information for the new WDHP program be advised of the terms and conditions under which the IPC had granted authorization to Management Board of Cabinet for the indirect collection of personal information.

#### SECTIONS CONSIDERED

2(1), 40(2), 42(c), 42(d)

### INVESTIGATION I93-076P

Institution: Ministry of Consumer and Commercial Relations

FEBRUARY 28, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

accuracy • method • name • regulated form • security

The complainant had been legally adopted at a young age. Her name had been officially changed on an adoption order to that of her adoptive parents. When the complainant had a child, she was required to complete a "Statement of Live Birth" form. The form asked for the mother's "surname at birth" but did not specify, that according to the *Vital Statistics Act* and the *Child and Family Services Act*, if a person had been adopted, the person's "surname at birth" was the adoptive name. The complainant thus provided what she understood to be her surname at birth, i.e., her pre-adoptive



name. This was the name that was keyed into the Ministry's registration data base as her maiden name.

When the complainant's husband visited the Ministry to apply for an extended birth certificate for their son, he provided the Ministry's Clerk with the complainant's maiden name (her adoptive name). Without requesting identification from him, the Clerk informed the complainant's husband that the complainant's maiden name listed on her child's birth registration was different from the name he had given and told him the name that was listed, i.e., her pre-adoptive name.

The complainant was concerned about the access to, and security of her personal information, since the Clerk had released the complainant's surname at birth (her pre-adoptive name) to her husband without first requesting identification. The complainant was also concerned about the accuracy of the Ministry's records, since her pre-adoptive name, which had been shown as her surname at birth on her son's birth registration, had been keyed into the registration data base as her maiden name.

#### CONCLUSION

The IPC was unable to determine what, if any measures had been taken by the Ministry's Clerk before releasing her personal information to the complainant's husband. The Ministry stated that its staff are trained on, and acutely aware of the importance of ensuring a person's identification prior to releasing any personal information. Staff are told that applicants must provide specific information to prove entitlement to the personal information they are seeking. However, the Ministry did not have any written procedures or policies on this matter. The IPC concluded, that while reasonable measures to prevent unauthorized access to records were "defined"

and "put in place", they were not "documented" as required by section 4(1) of Regulation 460, as amended.

With respect to the accuracy of its records, the Ministry advised that it was aware of the difficulties associated with the wording of the form and that there was a need to amend it. The Ministry suggested that any changes to the Form could be included as a part of its reform of the birth registration process. In the interim, when the form is next reprinted, the Ministry would include instructions on the back specifying that if the person had been adopted, the person's adoptive name should be given as the "surname at birth".

#### RECOMMENDATION

The IPC recommended that the Ministry "document" the measures that were defined and put in place to prevent unauthorized access to records in its custody and control, in accordance with section 4(1) of Regulation 460, as amended.

#### SECTIONS CONSIDERED

2(1), Regulation 460, as amended by Regulation 532/93

#### STATUTES CONSIDERED

*Vital Statistics Act, Child and Family Services Act*

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### INVESTIGATION I93-084P

Institution: Ontario Human Rights Commission

FEBRUARY 16, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

lawenforce • lawuse

The Ontario Human Rights Commission (OHRC) had been conducting an investigation into a complaint against a library, filed by an employee of the library. During the course of its investigation, the OHRC had asked relevant library employees, including the com-

plainant, for their racial backgrounds. When the complainant had refused, she had been advised by the OHRC's Investigating Officer that this information was already contained in the OHRC's records.

The complainant was concerned that the OHRC's collection of personal information was contrary to the *Act* and that information about her racial background had been indirectly collected.

#### CONCLUSION

The IPC found that the OHRC complaint involved an alleged contravention of section 5(1) of the *Ontario Human Rights Code*, which states that every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, etc. The OHRC complaint was specifically about discrimination because of race and colour. As a part of its investigation of a complaint of this nature, the OHRC had asked library employees, who worked in the immediate area of the staff member who had filed the OHRC complaint, for their racial backgrounds. This included the complainant.

The OHRC's collection of the racial background information was for the purpose of pursuing the investigation of a complaint filed under the *Code*. In Order 200, the IPC had determined that investigations into complaints made under the *Code* were considered law enforcement matters. Similarly, in this case, we concluded that the OHRC's collection of the racial background information of library employees was used for the purposes of law enforcement, in accordance with section 38(2) of the *Act*.

When the complainant had refused to provide her racial background, she had been advised by the Investigating Officer that the OHRC already had this infor-

mation. The OHRC informed the IPC that the complainant had been advised of this in error. The OHRC stated that it had no information in its records regarding the complainant's racial background and that it was sending a letter of explanation to the complainant. The IPC informed the complainant of this fact, and she was satisfied that the OHRC's records did not contain information about her racial background.

#### SECTIONS CONSIDERED

2(1), 38(2), 39(1)

#### STATUTE CONSIDERED

*Ontario Human Rights Code*

### INVESTIGATION I93-106P

Institution: Workers' Compensation Board

MARCH 30, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

disclose • WCB

The complainant's spouse had filed a claim for non-economic loss with the WCB. The Board subsequently disclosed the spouse's personal information to her employer. The spouse's information was contained in a psychiatrist's report, assessment and covering letter (the NEL). The information in the NEL included details concerning the spouse's sexual life with the complainant, and other information about the complainant, such as his age and state of health. The complainant was of the view that the disclosure of his personal information to his spouse's employer was a breach of the *Act*.

#### CONCLUSION

The WCB stated that the disclosure of the complainant's personal information was in accordance with section 42(12) of the *Workers' Compensation Act* (the *WCA*) which requires the Board to send a copy of the NEL to both the worker and the accident employer. The WCB

further stated that spousal and family information, both before and after an injury, is an important component used to assess a worker's claim for permanent impairment due to mental and behavioural disorders. Since either the worker or his/her employer may object to the assessment by asking for a second assessment, both parties to the claim must be provided with the same document.

The IPC concluded that the disclosure of the complainant's personal information to his spouse's employer was in accordance with section 42(12) of the *WCA*. The disclosure was, therefore, in accordance with section 42(e) of the *Act*, for the purposes of complying with an Act of the Legislature.

#### RECOMMENDATION

The IPC was concerned that the NEL contained such detailed information about the complainant and other family members. During the course of the investigation, the Board had informed us that a policy was being prepared that would require doctors to rewrite medical assessments that contained too much or unnecessary information. We therefore recommended that the Board's policy include a reminder to doctors of the requirements of the *Act*, with regard to writing medical assessments, and in particular, with respect to the personal information of individuals other than the worker.

#### SECTIONS CONSIDERED

2(1), 42(12)

#### STATUTE CONSIDERED

*Workers' Compensation Act*

### INVESTIGATION I94-006P

Institution: Ministry of Natural Resources

APRIL 25, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • grievance • necessary • OPSEU

As a result of a grievance, the Ministry and the Ontario Public Service Employees Union (OPSEU) had signed a memorandum of settlement agreeing to convert a number of Ministry seasonal jobs to permanent status. The memorandum of settlement was made an order of the Grievance Settlement Board (GSB).

The complainant was one of the employees to be reinstated to permanent status. Under the memorandum, the Ministry was required to reimburse the complainant, after making specific deductions for the period that he was not employed by the Ministry, i.e., the reinstatement period.

The Ministry requested that the complainant provide details of gross pay, regular salaries, overtime payments, pension payments, Canada Pension Plan (CPP) contributions and unemployment insurance benefits. This information was collected from each employee eligible for reinstatement, so that the Ministry could determine the amount of reimbursement and the specific deductions for that employee during the period of reinstatement.

The complainant was concerned that the collection of his personal information was contrary to section 38(2) of the *Act*.

#### CONCLUSION

The IPC found that since the memorandum had been made an order of the GSB, it was final and binding upon the parties. It was our view that the Ministry was thus obliged to implement the terms of reinstatement in the memorandum and that



this implementation was a lawfully authorized activity. In implementing the terms, the Ministry was required to retroactively compensate, for lost wages, those employees who met the criteria for reinstatement, including the complainant. To determine the total compensation to which each employee was entitled, the Ministry requested the above noted personal information.

The IPC found that the Ministry's collection of this personal information, with the exception of CPP contributions, was "necessary" to the proper administration of the lawfully authorized activity of implementing the memorandum's terms of reinstatement. Therefore, the Ministry's collection was in accordance with section 38(2) of the *Act*.

With respect to the collection of CPP contributions, the Ministry informed the IPC that, after seeking clarification from Revenue Canada, it determined that this information was not required and should not have been collected. The Ministry advised that it was no longer seeking this information from the complainant.

#### RECOMMENDATION

Since the Ministry had acknowledged that its collection of the CPP contributions was unnecessary and indicated that it would be emphasizing the privacy aspects of the *Act* as part of its regular program to train staff on the requirements of the legislation, the IPC made no further recommendations.

#### SECTIONS CONSIDERED

2(1), 38(2)

#### STATUTE CONSIDERED

*Crown Employees Collective Bargaining Act*

## INVESTIGATION I93-028M

Institution: A Separate School Board

MARCH 29, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

address • boardedu • children • consentdis  
• minor • OSR • phone

The complainant, a 17-year-old student of the Board, stated that she had left home because of threatened physical abuse by her mother and stepfather. She had asked her school principal not to disclose her new address and telephone number to her mother and stepfather. She had been assured that her Ontario Student Record (OSR) would not contain her address and that it would not be disclosed.

About five months later, the complainant, who had been attending a co-op job placement at a law firm, was absent for several days. School staff tried to call her to ask her to return some documents to the law firm. The principal visited her home, but there was no response.

One of the firm's lawyers had apparently been reporting the complainant's progress in school to the stepfather. The lawyer told the stepfather that the complainant had withdrawn from the co-op program. The mother called the school and found that her daughter had quit school. The telephone number and address were then released to the mother. The complainant stated that she subsequently received threatening telephone calls from her mother and stepfather. She believed that the disclosure of her address and telephone number breached the *Act*.

#### CONCLUSION

The Board indicated that the principal had agreed to keep only the telephone number in confidence, and that "it would have been unlikely for him to assure any

student that the address would not form part of the OSR". The Board stated that it had disclosed the information to the mother in an effort to contact the complainant.

The IPC established that the address had been recorded in the OSR. The *Education Act* grants parents the right to examine the OSR of their child until he/she reaches the age of 18. The IPC thus concluded that the complainant's address had been disclosed in accordance with section 32(e) of the *Act*, i.e., in order to comply with an Act of the Legislature.

The IPC was unable to establish if the telephone number had also been recorded in the OSR. In the IPC's view, the disclosure of the telephone number was not in keeping with the spirit of the *Act*, given the Board's agreement with the complainant.

#### RECOMMENDATION

The IPC recommended that the Board incorporate the following steps into its procedures:

1. That students under the age of 18, who request non-disclosure of their OSR information to their parents, be advised of the Board's obligations under the *Education Act* to allow parents to examine their child's OSR.
2. That the Board's co-op employers be advised, that the Board is an institution under the *Act*, and of the requirement that student information is required to be kept confidential.

#### SECTIONS CONSIDERED

2(1), 32(e)

#### STATUTE CONSIDERED

*Education Act*



## INVESTIGATION I93-029M

Institution: A City

FEBRUARY 1, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

use • accessreq

The complainant had filed an insurance claim with the City concerning damage to his compact disc player, which he stated had been caused by vibrations from machinery used by the City to repair a water-main break. The complainant had then submitted a claim to the City's insurance adjusters. His claim was denied.

The complainant then filed access to information requests under the *Act*. He also appealed the denial of his insurance claim to the City's Board of Control. In determining the appeal, the Board of Control had before it, a staff report from the City's Manager of Insurance/Risk Administration and the City Treasurer. Based on these individuals' recommendations, the Board of Control denied the appeal.

The complainant contended that the City had used his access requests to cause his insurance claim against the City to be denied by its Board of Control.

### CONCLUSION

The IPC found that when the Board of Control considered the complainant's appeal of the denial of his insurance claim, it had before it the staff report which included a paragraph containing information about the complainant's access request.

The City stated that it had relied on section 31(b) for its use of the complainant's personal information, i.e., for the purpose for which it had been obtained or compiled or for a consistent purpose.

The IPC determined that the City had obtained or compiled the complainant's personal information relating to his access request for the purpose of administering the access request. However, the City had used this personal information, when it was included in the report, to consider the complainant's appeal of the denial of his insurance claim. Therefore, it was the IPC's view that it could not be said that the City had used the complainant's personal information relating to his access request for the purpose for which this information had been obtained or compiled.

It was also the IPC's view that the information had not been used for a consistent purpose. Therefore, the City's use of the complainant's personal information relating to his access request was not in accordance with section 31(b) of the *Act*.

### RECOMMENDATION

We recommended that the City take steps to ensure that personal information be used in accordance with the *Act*, for example, amend any existing guidelines or procedures and inform all appropriate staff accordingly.

### SECTIONS CONSIDERED

2(1), 31(b)

## INVESTIGATION I93-034M

Institution: A City

APRIL 25, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

### KEYWORDS

employee • WCB • medical • consentdis  
• nonrecord • performance

The complainant, a City employee, made a claim to the Workers' Compensation Board (WCB) with respect to a back injury. His claim was denied. Later, when he made a request to the WCB for access to his claim file, he found that the City

had disclosed certain information about him to the WCB. He believed that disclosure of some information not relevant to his claim breached the *Act*, and that, in particular, three verbal comments made by City employees to the WCB Investigator had been prejudicial to his claim.

### CONCLUSION

The IPC concluded that the complainant's personal information in his short-term disability report and sick leave record was disclosed in accordance with section 32(b) of the *Act*, since he had authorized the City to disclose his medical information contained in these records to the WCB.

The IPC determined that the City had compiled the complainant's personal information in his leave of absence record, to create a record of his absenteeism for use in human resources programs; and had disclosed this information to the WCB to provide an overall picture of his absences from work. It was the IPC's view that the disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had been compiled and was, thus, for a consistent purpose, in accordance with section 32(c) of the *Act*.

The IPC concluded that the items of the complainant's personal information in the employee history record (details respecting the claim) were disclosed in accordance with the *Workers' Compensation Act* (the *WCA*). The disclosure of these items was thus in accordance with section 32(e) of the *Act*, in order to comply with an Act of the legislature. However, the disclosure of items not respecting the claim was not in accordance with the *Act*.

The IPC concluded that the complainant's personal information in two items of correspondence to the WCB, was

disclosed in accordance with sections 32(e) and 32(c) respectively. The WCB had requested that the City furnish details respecting the claim, in accordance with the *WCA*, and the information was disclosed for the purpose for which it had been compiled to provide further information to the WCB and to request an investigation.

Only the verbal comment about the complainant's job performance contained information that was a matter of record with the City and was thus, "personal information". The IPC found that the WCB had required the City to furnish the information during interviews with employees, in accordance with the *WCA*. The disclosure of this personal information was thus, in accordance with section 32(e) of the *Act*.

#### RECOMMENDATION

The IPC recommended that personal information unrelated to an accident or claim be severed from records provided to the WCB.

#### SECTIONS CONSIDERED

2(1), 32(b), 32(c), 32(e)

#### STATUTE CONSIDERED

*Workers' Compensation Act*

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### INVESTIGATION I93-037M

Institution: A Municipality

MARCH 28, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

collect • disclose • necessary • noticecollect

The complainant's son, who has special needs, was enrolled in the Municipality's Early Intervention Services Program (EISP). The EISP is a home-based, comprehensive, early intervention service for children with special needs and their families. The EISP is administered by the Municipality and funded by the Minis-

try of Community and Social Services (the Ministry) with no cost to the family. The family is the key decision maker who, with staff, set goals based on identified needs.

Although the EISP is family-oriented, the complainant did not agree with the family approach. She felt that the EISP should deal only with her son's development and objected to information relating to herself and her other child being included in her son's file.

She complained that the Municipality did not have the authority to collect her family's personal information and that the Municipality had not given any notice of its collection.

#### CONCLUSION

The IPC determined that the EISP was funded by the Ministry under the *Child and Family Services Act* and its Regulations, and was thus a lawfully authorized activity. The IPC also concluded, that in order to make a program geared to helping families of children with special needs work well, it was necessary for the Municipality to obtain information about more than just the special needs of the child in question. It was our view that the Municipality's collection of personal information, including information about other family members, was necessary to the proper administration of a lawfully authorized activity, and was thus in accordance with section 28(2) of the *Act*.

The Municipality stated that it had given notice of the conduct of the program and the purpose for which the personal information collected was to be used. However, since this notice did not include the legal authority for the collection and the title, business address and telephone number of an employee of the Municipality who could answer questions about

the collection, the notice did not meet the full requirements of section 29(2) of the *Act*.

#### RECOMMENDATION

The IPC recommended that the Municipality give proper notice for the collection of personal information on its questionnaires and forms relating to its EISP, in accordance with section 29(2) of the *Act*.

#### SECTIONS CONSIDERED

2(1), 28(2), 29(2), 32

#### STATUTES CONSIDERED

*Child and Family Services Act* and Regulations

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### INVESTIGATION I94-003M

Institution: A Police Services Board

APRIL 7, 1994

(ASSISTANT COMMISSIONER CAVOUKIAN)

#### KEYWORDS

councilmeet • mediation • police

An anonymous report on budget cuts was attached to the public agenda for one of the Board's meetings. The report contained the personal information of several employees. A senior officer representing one of these employees complained that by attaching the report to the public agenda, the Board had disclosed the employee's personal information, contrary to the *Act*.

#### CONCLUSION

The Board stated, that in order to comply with the *Police Services Act*, it had to consider matters in public session unless it was of the opinion that the requirements of section 35(4) of the *Police Services Act* had been met, i.e., the Board may exclude the public from a meeting or hearing where the matters to be disclosed involve public security or intimate financial or personal details.

The Board stated, that in this case, a consideration of the information at issue suggested that, in retrospect, it would have been more appropriate to have had the report at issue, or the relevant portions of it, placed on the Board's confidential agenda rather than on its public agenda. The Board stated that the disclosure of the information in question had been inadvertent.

The Board assured us that it would make all reasonable efforts to ensure that no sensitive personal information would appear on future Board public agendas and that no similar accidental disclosures of sensitive information would occur in the future.

The senior officer representing the employee was informed of the Board's

response to the complaint. He and the employee were satisfied with the Board's assurances.

#### SECTION CONSIDERED

2(1)

#### STATUTE CONSIDERED

*Police Services Act*

*\* Settled; no report issued.*

## Summary of Compliance Investigation Statistics

NUMBER OF COMPLIANCE INVESTIGATION FILES OPENED			
	1994 TO DATE*	1993 TO DATE*	1993 TOTAL
Provincial	16	26	119
Municipal	24	13	81
Non-Jur	3	0	10
Total	43	39	210

NUMBER OF COMPLIANCE INVESTIGATION FILES CLOSED			
	1994 TO DATE*	1993 TO DATE*	1993 TOTAL
Provincial	35	23	107
Municipal	15	19	100
Non-Jur	2	0	10
Total	52	42	217

ANALYSIS OF COMPLIANCE INVESTIGATION FILES CLOSED 1994 TO DATE		
MAIN ISSUE	PROVINCIAL	MUNICIPAL
Collection	11	2
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\* January 1 - March 31

<sup>1</sup>Excludes cancelled investigations.

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